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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 91, 135

[Docket No.: FAA–2006–24981; Amdt. Nos. 61–138, 91–344, and 135–134]

RIN 2120–AK63

MU–2B Series Airplane Training Requirements Update

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action relocates and updates the content of SFAR No. 108 to the newly created subpart N of part 91 in order to improve the safety of operating the Mitsubishi Heavy Industries (MHI) MU–2B series airplane. SFAR No. 108 will be eliminated from the Code of Federal Regulations on November 7, 2017, after which time all MU–2B operators must comply with this subpart. The FAA is relocating the training program from the SFAR No. 108 appendices to advisory material in order to allow the FAA to update policy while ensuring significant training adjustments still go through notice-and-comment rulemaking. The FAA is also correcting and updating several inaccurate maneuver profiles to reflect current FAA training philosophy and adding new FAA procedures not previously part of the MU–2B training under SFAR No. 108. This rule will require all MU–2B training programs to meet the requirements of this subpart and to be approved by the FAA to ensure safety is maintained. As a result of this action, operators, training providers, and safety officials will have more timely access to standardized, accurate training material.

DATES: This rule is effective on September 7, 2016, except for the removal of SFAR No. 108 to part 91 which is effective on November 7, 2017. The compliance date for this final rule is November 7, 2016. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of September 7, 2016.

Submit comments on or before November 7, 2016.

ADDRESSES: Send comments identified by docket number FAA–2006–24981 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Joseph Hemler, Commercial Operations Branch, Flight Standards Service, AFS–820, Federal Aviation Administration, 55 M Street SE., 8th floor, Washington, DC 20003–3522; telephone (202) 267–1100; email *joseph.k.hemler-jr@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Although the FAA is inviting comments, we have made the determination to adopt this final rule without prior notice and public comment in order to mitigate the safety risks where current Special Federal Aviation Regulation (SFAR) No. 108 conflicts with the FAA's current policy and guidance. The Regulatory Policies and Procedures of the Department of Transportation (DOT), 44 FR 1134 (February 26, 1979), provide that to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice.

Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code (U.S.C.). Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General Requirements." Under that section, Congress charged the FAA with prescribing regulations that set the minimum standards for practices, methods, and procedures necessary for safety in air commerce. This regulation is within the scope of that authority because it will set the minimum level of safety for operation of the Mitsubishi MU–2B.

SFAR No. 108 contained inaccurate MU–2B flight training profiles, and the National Transportation Safety Board (NTSB) recommended that the FAA remedy these inaccuracies as soon as is practical due to serious safety concerns (NTSB Rec. A–14–96 and –97). The FAA concludes that immediate action is necessary to correct the inaccuracies in SFAR No. 108 and, therefore, finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Further, the FAA finds that good cause exists under 5 U.S.C. 553(d) for making this rule effective immediately upon publication.

I. Final Rule With Request for Comments

Special Federal Aviation Regulation No. 108 mandated training, experience, and operating requirements to improve the safety of operating the MHI MU–2B series airplane. The SFAR contained inaccurate training maneuver profiles and is misaligned with current FAA flight training policy. This action corrects safety-related inaccuracies in the regulation and streamlines the process for updating MU–2B flight training requirements by removing them from regulations and placing them in advisory material. This change will permit the FAA to be more responsive by issuing guidance should any inaccuracies be discovered or should training requirements or policy need to be revised and updated in the future. As a result of this action, pilots, operators, training providers, and safety officials will have more timely and accurate training material.

II. Background

A. Background

In 2008, the FAA published SFAR No. 108 to mandate flight training and experience requirements for operators of the MHI MU–2B twin-turboprop aircraft. The rule became effective in 2009 and did not have an expiration date. The flight training and experience requirements were based on an FAA safety evaluation of the aircraft, which has unique control surfaces and characteristics. There is a fleet of approximately 300 aircraft operating today in accordance with 14 CFR parts 91 and 135. In the 20 years leading up to SFAR No. 108, the MU–2B series aircraft experienced 80 accidents with 40 fatalities. Since the effective date of SFAR No. 108, there have only been two fatal accidents. In addition to experience and annual training requirements for pilots, SFAR No. 108 mandated training curriculum and flight profiles for operators and training providers.

Following the issuance of SFAR No. 108 on February 5, 2008, with a compliance date of February 5, 2009, Mitsubishi Heavy Industries of America (MHIA) and Turbine Aircraft Services (TAS), an industry party, began an evaluation to identify errors in flight profiles published in SFAR No. 108. At that time, minor spelling errors and technical items were identified. Additionally, MHIA and TAS notified the FAA of at least one error in procedure in the One Engine Inoperative Maneuvering Loss of Directional Control (Vmc Demonstration) profile.

Additionally, since the publication of SFAR No. 108, the FAA has approved the use of Continued Descent Final Approach (CDFA) procedures in all training programs, including the training programs for the MU–2B. The MU–2B FAA Flight Standardization Board (FSB)[1] subsequently included CDFA profiles in its FSB Report for use in MU–2B training programs. Because the FAA did not include CDFA procedures in SFAR No. 108, pilots were not permitted to train on these procedures or operate the aircraft consistent with them.

In 2012, the FAA revised its stall recognition and recovery procedures for all aircraft and all training programs by removing the emphasis to ensure a "minimum loss of altitude" when performing stall training maneuvers and by emphasizing a positive reduction in angle of attack procedure as the proper stall recovery method (Advisory Circular (AC) 120–109). The FAA also introduced the use of "startle factor" training through the use of the autopilot during stall recognition and recovery practice in all aircraft training programs. However, the FAA did not include the "startle factor" training in SFAR No. 108.

Both MHIA and TAS requested by letter in early 2012 that the FAA change the MU–2B flight training profiles in SFAR No. 108 and make them consistent with the new stall recognition and recovery procedures. They also suggested the FAA remove the flight training maneuver profiles from SFAR No. 108, for ease of subsequent modification in the event of regulatory or training procedural changes made by the FAA. The FAA recognized that proper stall recognition and recovery is a safety-of-flight concern and concurred that distributing information on how to recover from a stall was essential to proper MU–2B training and safety of flight.

B. Statement of the Problem

There were a number of conflicts between SFAR No. 108 and best practices and FAA guidance, which demonstrate a better safety record. The FAA's Kansas City Aircraft Evaluation Group (AEG)[2] and MHI have documented that the SFAR conflicted with new and revised FAA training requirements, policy, guidance and safe operating practices set forth in the Airline Transport Pilot Practical Test Standards (PTS), Commercial Pilot PTS, FAA Notice N8900.205, Enhanced Stall and Stick Pusher Training; Advisory Circular (AC) 120–109, Stall and Stick Pusher Training, and AC 120–108, Continuous Descent Final Approach (CDFA). SFAR No. 108 conflicted with FAA guidance in the following instances:

First, SFAR No. 108 mandated power and trim settings for the demonstration of a one-engine-inoperative maneuver with loss of directional control. Those settings did not meet the safety standards of current FAA guidance and best practices. The "One Engine Inoperative Maneuvering—Loss of Directional Control" profile in the SFAR differed from current FAA guidance and best practices described in the FAA Airplane Flying Handbook (FAA–H–8083–3A).

Second, CDFA Procedures published in AC 120–108 and published in the MU–2 FSB Report, Revision 4, were not included in the training profiles in SFAR No. 108. Though published in the MU–2 FSB Report, Revision 4, CDFA procedures were not included in the SFAR No. 108 flight training profiles and therefore operators could not use these procedures while operating an MU–2B.

Third, SFAR No. 108 stall-recovery profiles required operators to perform all stall recoveries with a "minimal loss of altitude." This was inconsistent with stall recovery guidance because the FAA now emphasizes successful recovery from a stall over minimizing the loss of altitude which can lead to a secondary stall. Recent changes to the FAA's stall training policy in AC 120–109 and PTS created conflicts with several flight profiles.

Finally, as identified by Aircraft Evaluation Group (AEG) of the Flight Standards Service and MHI, SFAR No. 108 mandates several airspeeds in appendix D flight profiles that are incorrect.

C. NTSB Recommendations

On October 23, 2014, NTSB urged the FAA to take action on the safety recommendations derived from the NTSB's investigation of a Mitsubishi MU–2B–25 airplane accident in Owasso, Oklahoma. (NTSB Rec. A–14–96 and –97). These recommendations addressed operational training and checklist usage for Mitsubishi MU–2B series airplanes.

The NTSB's investigation found that since SFAR No. 108 became effective in 2008, the FAA has revised its general stall recovery guidance and procedures for stall and stick pusher training for pilot certification and evaluation contained in AC 120–109, dated August 6, 2012. Advisory Circular 120–109 introduced a procedure for stall recovery that conflicted with related instruction provided in the SFAR. Therefore, the NTSB recommended in NTSB recommendation A–14–96 that the FAA revise, as soon as is practical, the "Approach to Stall" flight profile currently contained in SFAR No. 108 so that it is consistent with AC 120–109.

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[1] An FSB's primary responsibility is to determine requirements for pilot type ratings, to develop minimum training recommendations, and to ensure flight crew member competency. 8900.1, Volume 8, Chapter 2, Section 5.

[2] The AEG serves as Flight Standard Service (AFS) technical subject matter experts for operational and engineering activities. 8900.1, Volume 8, Chapter 2, Section 2.

The NTSB also recommended in recommendation A–14–97 that "the FAA separate the flight training profiles from the SFAR such that any updates to the profiles can be made without having to go through the rulemaking process." The FAA interprets this recommendation from the NTSB to mean that the more prescriptive rule in SFAR No. 108 should be revised to a more flexible rule, such as a performance standard. This change will allow flight training profiles to be updated more rapidly in response to improved training best practices and guidance, thus improving operational safety of the MU–2B aircraft.

III. Discussion of Final Rule

In order to provide a more flexible regulatory framework for MU–2B training, the FAA is removing all appendices to SFAR No. 108 which contained many prescriptive requirements. With implementation of this rule, all MU–2B training must take place under an FAA approved MU–2B training program. Approval of all MU–2B training programs will be based on whether that program meets the standards of § 91.1705(h).

The following figure describes the changes made from SFAR No. 108 as a result of this final rule and this references the specific sections in the codifications of these requirements in part 91.

FIGURE 1—SUMMARY OF CHANGES TO SPECIAL FEDERAL AVIATION REGULATION NO. 108 MADE BY THIS FINAL RULE

Old section/paragraph	The new part 91, Subpart N reference	Description of change
Section 1, Applicability	§ 91.1701 Applicability	Provides new compliance dates. References approved MU–2B training program.
Section 2, Compliance and eligibility	§ 91.1703 Compliance and Eligibility	No substantive changes. Minor language change in paragraph (b) for clarity. Paragraph (g) revised to reference approved training program, adds a cross-reference to § 91.1705(h).
Section 3, Required pilot training Paragraphs (a) through (g)	§ 91.1705 Required Pilot Training	No change other than to revise cross-references and reference approved training programs.
Table 1, Manufacturer's checklists	§ 91.1705(g)	No change.
Section 4, Aeronautical experience	§ 91.1711 Training Program Approval	No change.
Section 5, Instruction, checking and evaluation	§ 91.1713 Instruction, Checking, and Evaluation.	No change.
Section 6, Currency requirements and flight review.	§ 91.1715 Currency Requirements and Flight Review.	No change.
Section 7, Operating requirements	§ 91.1717 Operating Requirements	No change.
Section 8, Credit for prior training	§ 91.1719 Credit for Prior Testing	Updated to give credit for previous training under SFAR No. 108.
Section 9, Incorporation by reference	§ 91.1721 Incorporation by Reference	Revised to address current incorporation by reference requirements.
Section 10, Expiration	No Expiration	No change.
Appendix A, MU–2B General Training Requirements.	§ 91.1707(a), § 91.1707(b), § 91.1707(c)	Removed. Table 1, Table 2, and Table 3 moved to § 91.1707.
Appendix B, MU–2B Ground Training Curriculum Contents.	§ 91.1705(h)(1)	Removed. Training program standard added to § 91.1705(h)(1).
Appendix C, MU–2B Final Phase Check and Flight Training Requirements.	§ 91.1705(h)(3)	Removed. Phase check requirements added to § 91.1705(h)(3).
Appendix D, MU–2B Maneuver Profiles	§ 91.1705(h)(2)	Removed. Training program standard added to § 91.1705(h)(2).

The following discussion describes the training program standard established for MU–2B training and contained in subpart N of part 91. These standards are found in § 91.1705(h), and an example of a training program implementing these standards may be found in Advisory Circular accompanying this rule.

Paragraph 91.1705(h) contains the training program standard which replaces the prescriptive content of the former SFAR No. 108's appendices. Paragraph 91.1705(h) requires all MU–2B training programs to include a ground training curriculum, a flight training curriculum, differences training for operators of modified MU–2B aircraft, icing training, and training program hours for ground and flight training. The standard in § 91.1705(h) will allow for updates to MU–2B training programs and allow training providers to keep training programs up to date with current best practices while ensuring that the programs meet the FAA's safety standards. By placing the specific guidance regarding training program content in an AC, the FAA will ensure that the training program specific guidelines can be updated as agency safety philosophy regarding training evolves. However, the requirements for the training program will be retained in the regulations, ensuring that significant training adjustments would go through notice and comment rulemaking.

As required by § 91.1705(h)(1), an MU–2B training program must include a ground training curriculum sufficient to ensure pilot knowledge of MU–2B aircraft systems and procedures necessary for safe operation and proficient pilot knowledge of MU–2B aircraft. The FAA has replaced the prescriptive list of specific items listed in Appendix B to SFAR No. 108 with this performance standard.

As required by § 91.1705(h)(2), an MU–2B training program must also include a flight training curriculum with flight training maneuver profiles sufficient in number and detail to ensure pilot proficiency in all MU–2B operations for each MU–2B Model in accordance with MU–2B aircraft limitations, procedures, and MU–2B cockpit checklist[3] procedures applicable to the MU–2B Model being trained. Examples of MU–2B flight training maneuver profiles may be found in the FAA recommended MU–2B training program in the appendix of Advisory Circular (AC) AC 91–MU2B Mitsubishi MU–2B Training Program.

The FAA has included in subpart N of part 91 a list of specific maneuvers that an MU–2B training program must include in order to ensure pilots are adequately prepared for the unique safety challenges of operating an MU–2B. SFAR No. 108 was more prescriptive because it required these maneuvers in addition to requiring operators to follow all specific airspeeds and the order of procedures of the flight training maneuver profiles. The revised regulation allows for maneuver profiles to be updated with developing training and operational best practices. In order to obtain FAA approval, an MU–2B training program must contain the following flight training maneuver profiles for the MU–2B Model being trained:

- Normal takeoff with 5- and 20- degrees of flaps;
- Takeoff engine failure with 5- and 20- degrees of flaps;
- Takeoff engine failure on a runway or a rejected takeoff;
- Takeoff engine failure after liftoff when unable to climb. This maneuver may be completed in classroom or a flight training device only;
- Steep turns;
- Slow flight maneuvers;
- One engine inoperative maneuvering with a loss of directional control;
- Approach to stall in clean configuration and with wings level;
- Approach to stall in takeoff configuration with 15- to 30- degrees bank;
- Approach to stall in landing configuration with gear down and 40- degrees of flaps;
- Accelerated stall with no flaps;
- Emergency descent at low speed;
- Emergency descent at high speed;
- Unusual attitude recovery with the nose high;
- Unusual attitude recovery with the nose low;
- Normal landing with 20- and 40- degrees flaps;
- Go around and rejected landing;
- No flaps or 5- degrees flaps landing;
- One engine inoperative landing with 5- and 20- degrees of flaps;
- Crosswind landing;
- Instrument landing system (ILS) and missed approach;
- Two engine missed approach;
- One engine inoperative ILS and missed approach;
- One engine inoperative missed approach;
- Non-precision and missed approach;
- Non-precision CDFA and missed approach;
- One engine inoperative non-precision and missed approach;
- One engine inoperative non-precision CDFA and missed approach;
- Circling approach at weather minimums;
- One engine inoperative circling approach at weather minimums.

As required by § 91.1705(h)(3), an MU–2B training program must also include a final phase check sufficient to document pilot proficiency in the flight maneuvers as specified in the approved training programs phase check. This standard replaces the final phase check requirements in former Appendix C to the SFAR No. 108.

As required by § 91.1705(h)(4), an MU–2B training program must also include differences training sufficient to ensure pilot proficiency in each model of the MU–2B aircraft operated by a pilot who operates multiple MU–2B model variants concurrently. The differences training requirement is unchanged from the prior version of SFAR No. 108. Due to the age of the MU–2B fleet currently in operation, many MU–2B aircraft have been modified from the original factory configuration. Therefore, the FAA will continue to mandate differences training in order to ensure that those operators who operate multiple versions of the MU–2B aircraft are adequately trained to safely operate various MU–2B configurations. MU–2B differences requirements have been removed from Appendix A of SFAR No. 108 and are now specified in § 91.1705(h)(4). Section 91.1705(h)(4) only includes differences for factory type design MU–2 aircraft while other applicable MU–2 differences are required by other FAA approved training programs (*e.g.* part 135 and 142 operations) and AC 91–MU2B. The hours requirement for Differences Training can be found in § 91.1707(c). Differences other than factory type design MU–2B differences applicable to MU–2B aircraft are highly recommended for part 91 MU–2B training. Due to the magnitude of these changes to the MU–2B fleet, additional training is necessary to ensure pilot proficiency.

As required by § 91.1705(h)(5), an MU–2B training program must also include icing training sufficient to ensure pilot knowledge and safe operation of the MU–2B aircraft in icing conditions as established by Airworthiness Directive 1997–20–14 or an Alternate Means of Compliance to Airworthiness Directive 2000–09–15, as amended.

As required by § 91.1705(h)(6), an MU–2B ground and flight training program must include the training hours identified by § 91.1707(a) for ground instruction, § 91.1707(b) for flight instruction and § 91.1707(c) for differences training. These training hours are identical to SFAR–108 training hours which were initially determined by the FAA's MU–2B FSB as the number of hours necessary to ensure the safe operation of the MU–2B aircraft.

As required by § 91.1707(e), an MU–2B training program must include examples of endorsements for compliance with § 91.1705(f) appropriate to the content of that specific MU–2B training program's compliance with the standards of SFAR No. 108. Section 91.1705(f) describes the endorsement required under § 91.1705 (a) and (b) must be made by:

(1) A certificated flight instructor under part 61 or part 141 meeting the qualifications of § 91.1713; or

(2) a training center evaluator authorized by the FAA to conduct MU–2B evaluation events at a part 142 Training Center meeting the qualifications of § 91.1713 or,

(3) for persons operating the MU–2B for a part 119 certificate holder within the last 12 calendar months, the part 119 certificate holder's flight instructor if that instructor is authorized by the

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[3] The MU–2B checklists were incorporated by reference into SFAR No. 108 by the Final Rule published on 02/06/2008, 73 FR 7034.

FAA meets the requirements of § 91.1713.

This section has been revised to include endorsements made by an authorized simulator instructor at an FAA 142 Training Center.

As required by § 91.1709(a), to obtain approval for an MU–2B training program, training providers must submit a proposed training program to the Administrator. Only training programs approved by the Administrator may be used to satisfy the standards of subpart N of part 91. Training providers may submit for approval the most current version of the appendix to AC 91–MU2B, which the FAA has determined meets the standards of this subpart.

Parts 135, 141, and 142 training providers must submit their proposed training program to their Principal Operations Inspector (POI) or Training Center Program Manager (TCPM) for approval and inclusion in their approved training curriculum.

Part 91 training providers do not have an established process for seeking approval of a training program; therefore, part 91 training providers must submit for approval a proposed training program to their jurisdictional FAA Flight Standards District Office (FSDO). The term 'part 91 training providers' refers to training providers providing training under part 61 authority for a part 91 operation. Part 91 training providers may submit for approval the most current version of the appendix to AC 91–MU2B which the FAA has determined meets the standards of subpart N of part 91. The FAA FSDO will issue a Letter of Authorization (LOA) to the training provider if the proposed training program meets the standards of subpart N of part 91. For MU–2B training providers providing training under part 91, training programs will be approved for 24 months, unless sooner superseded or rescinded. For more details on how to submit an MU–2B training program for approval, please see AC 91–MU2B.

Under § 91.1709(a)(3), the Administrator may require revision of an approved MU–2B training program at any time. A training provider must present its approved training program and FAA approval documentation to any representative of the Administrator, upon request.

IV. Advisory Circular

The FAA is publishing an approved MU–2B training program as an appendix in the AC 91–MU2B Mitsubishi MU–2B Training Program. This AC may be used by training providers to meet the requirements of subpart N of part 91. Training providers may also use this AC as a reference for developing their own MU–2B training programs to submit for FAA approval pursuant to § 91.1709. The AC includes the SFAR No. 108 flight training maneuver profiles with appropriate revisions consistent with current training policy and guidance.

The following updates have been made to the MU–2B flight training profiles which have been removed from SFAR No. 108 and moved to AC 91–MU2B.

One Engine Inoperative Maneuvering Loss of Directional Control

The flight training maneuver profiles A–7, B–7, C–7 in the former Appendix D of SFAR No. 108 were incorrect regarding the procedures for setting power and trim for the demonstration of the one-engine-inoperative maneuver with a loss of directional control. The appendix D profile called for the MU–2B aircraft to be configured and trimmed for single engine flight prior to starting the maneuver. The FAA's Airplane Flying Handbook calls for the aircraft to be trimmed for two-engine flight at a slow airspeed and then for the power to be configured for single engine flight without re-trimming. Setting the configuration of the aircraft in the manner SFAR No. 108 required results in the rudder forces required prior to reaching the Velocity Minimum Control (Vmc) being less than the actual rudder forces required to maintain zero sideslip flight. The consequence of setting the configuration in that manner promotes an adverse training condition causing the pilot to under-control the aircraft in the event of an actual Vmc experience. The FAA has revised these maneuver profiles to reflect the proper settings and relocated them to the AC. Section 91.1705(h)(2) retains the requirement that MU–2B pilots train on this item.

Continued Descent Final Approach (CDFA)

An Advisory Circular (AC) published on January 20, 2011, for all aircraft operators, AC 120–108, would enhance the operational safety of an MU–2B aircraft during a non-precision instrument approach. The only non-precision approaches contained in the former version of SFAR No. 108 were those that use the "dive and drive" method, which consists of descending immediately after the final approach fix to the Minimum Descent Altitude (MDA) and then leveling off until reaching the next step down fix or the missed approach point, as appropriate. This SFAR 108 procedure, when accomplished with one engine inoperative, required that the landing gear remain retracted until the pilot had visual contact with the landing runway environment. This SFAR 108 procedure could have resulted in the pilot forgetting to extend the landing gear prior to landing and was seen by many as an unstabilized approach. It also could have resulted in under shooting the visual approach path to the runway, causing a possible controlled-flight-into-terrain (CFIT) accident.

The SFAR 108 "dive and drive" procedure, with gear extension restrictions, was originally approved for the MU–2 by the FAA in 2006 during the FSB review of the MU–2 single engine capabilities. Demonstrations showed a limited or negative climb capability for the MU–2 with the gear in the down position during single engine operations. Since most single engine non-precision approaches result in the need to maintain altitude for a period of time prior to final descent to the landing runway, the FAA determined that a non-standard landing gear configuration would be necessary to safely accomplish the level off. The "dive and drive" procedure is described in the AC 120–108.

The revised procedure allows the pilot the option to extend the landing gear at the normal, final approach fix location and to fly a calculated glide path to the missed approach point, or derived decision altitude. This revised procedure prevents the need to maintain altitude at the MDA with the gear down which, in turn, improves safety. The FAA recognizes this new procedure and the FSB and Aircraft Evaluations Group (AEG) have now revised and published Revision 4 of the FSB Report for the MU–2. This version of the FSB Report contains provisions for incorporating the new procedures into MU–2B training and operation.

The CDFA procedure was not contained in the SFAR No. 108 flight training profiles. The FAA is adding CDFA procedures to the list of required flight training procedures as an additional procedure in § 91.1705(h)(2). These new profiles, in addition to the existing profiles, have been relocated to AC 91–MU2B.

Stall Procedures

Advisory Circular 120–109 introduced a new procedure for the proper recognition and recovery from a stall for all aircraft. The AC 120–109 is supplemented by Safety Advisory for Operators (SAFO) 10012 standardizing the procedure for all aircraft and training programs. The latest revision of the FAA's Commercial Practical Test Standards calls for a change to the standard for performance and evaluation of stall procedures.

AC 120–109 resulted from an FAA and industry study of two well-publicized accidents, Colgan Air Flight 3407 and Air France Flight 447. In both of these accidents, the pilots were not immediately aware that the aircraft were stalled, and the pilots did not attempt to recover correctly, resulting in the loss of the aircraft and all passengers.

The maneuver profiles in SFAR No. 108 (profiles A–8 through A–11. B–8 through B–11, and C–8 through C–11) required operators to perform all stall recoveries with a ''minimal loss of altitude.'' This standard of performance has been redefined for all FAA and industry training for other aircraft, and new profiles have been published in MU–2B Training Program AC to instruct pilots to perform a stall recovery using a positive reduction of angle of attack method. This procedure change is important to ensure that pilots safely recover from a stall and do not cause a secondary stall of the aircraft.

Also, in the past, during advanced training in high performance aircraft like the MU–2B, pilot training did not include full stall recoveries. Historically, recovery would be initiated at the first indication of the stall, which in the case of the MU–2B is a stick shaker vibrating the yoke in order to warn the pilot of an impending stall. Most MU–2B stall training never reaches a full aerodynamic stall or even pre-stall buffet. In those cases, recovery without having to substantially lower the nose of the aircraft is possible, resulting in a minimum loss of altitude. In a full stall, however, a pilot must positively lower the nose to reattach the flow of air to the wing prior to adding power. Otherwise, the pilot risks a secondary stall as the nose rises from addition of power, and/or a torque roll occurs opposite the propeller rotational direction. The new standardized method of recovery from any level of stall condition is to substantially lower the nose.

Recent changes to the FAA's Practical Test Standards direct examiners to assess a pilot's ability to recover promptly at the ''onset'' (buffeting) stall condition. These revised profiles and AC 120–109 call out procedures for accomplishing this stall recognition and recovery from an autopilot 'ON' flight configuration, thereby simulating a stall catching the pilot by surprise and creating more realistic surprise and startle in training. The revised maneuver profiles for stall recognition and recovery have been relocated to the AC.

Compliance Dates

As required by § 91.1701, after November 7, 2016, all training conducted in an MU–2B must follow an MU–2B training program that meets the standards of this Subpart of part 91. This 60-day period gives training providers time to adjust their training programs to meet the standards of this subpart and to seek FAA approval for training provider developed training programs.

Also required by § 91.1701, this subpart is immediately applicable when effective to all persons who operate a Mitsubishi MU–2B series airplane, including those who act as pilot-in-command (PIC), act as second-in-command (SIC), or other persons who manipulate the controls while under the supervision of a PIC.

As required by § 91.1719, Initial/transition, requalification, or recurrent training conducted prior to November 7, 2016, compliant with SFAR No. 108, Section 3, effective March 6, 2008, is considered to be compliant with this subpart, if the student met the eligibility requirements for the applicable category of training and the student's instructor met the experience requirements of this subpart. This 60-day period allows current operators to continue training under SFAR No. 108 and allows for a seamless transition to training programs under this subpart.

The FAA is immediately relocating and updating the content of SFAR No. 108 to this subpart in order to be in accordance with current FAA policy regarding the safest and most effective means to conduct training in the area of stall recognition and recovery, continuous descent final approach procedures, and one engine inoperative maneuvering. The FAA understands that MU–2B training is currently being conducted consistently with FAA policy and considers such training to be critical to the safe operation of the aircraft. For that reason, the FAA does not anticipate any disruptions in training or operations of MU–2B aircraft as a result of the immediate effective date for this rule. This rulemaking is necessary to align the regulation with the safest, best means to conduct training in the MU–2B.

V. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it are to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this rule. The reasoning for this determination follows:

The purpose and benefit of this action is to correct safety related inaccuracies in the regulation and streamline the process for updating MU–2B flight training profiles should any inaccuracies be discovered or should training requirements or policy need to be revised and updated in the future. As a result of this action, operators, training providers, and safety officials will have timely, accurate training material. This action is important to minimize future accidents.

Pilots in need of MU–2B training can choose from either a training center or hiring one of the approximately 20 MU–2B qualified instructors. Currently, there are three primary training providers that offer FAA approved MU–2B training.

There were a number of conflicts between former SFAR No. 108 and best practices and FAA guidance, which demonstrate a better safety record. The FAA's Kansas City Aircraft Evaluation Group (AEG) and Mitsubishi Heavy Industries (MHI) have documented that the SFAR conflicted with new and revised FAA training requirements, policy, guidance and safe operating practices. These practices are set forth in the Airline Transport Pilot Practical Test Standards (PTS); Commercial Pilot PTS; FAA Notice N8900.205, Enhanced Stall and Stick Pusher Training; Advisory Circular (AC) 120–109; Stall and Stick Pusher Training; and AC 120–108, Continuous Descent Final Approach (CDFA).

SFAR No. 108 mandates training, experience, and operating requirements to improve the level of operational safety for the MHI MU–2B series airplane. SFAR No. 108 contained inaccurate training profiles and was misaligned with current FAA flight training policy. Since the enactment of SFAR No. 108, there have been two accidents with five fatalities. The SFAR required training in accordance with inaccurate MU–2B flight training profiles. The National Transportation Safety Board (NTSB) recommended that the FAA correct these inaccuracies as soon as is practical. New stall profiles have been created for instructing the pilot to perform a stall recovery using a positive reduction of angle of attack method. This procedure change is important to ensure that pilots safely recover from a stall and do not cause a secondary stall of the aircraft.

Besides the inaccurate training profiles, SFAR 108 was not aligned with current FAA Continuous Descent Final Approach (CDFA) procedures flight training policy published in AC 120–108 and published in the MU–2 FSB Report, Revision 4. FAA CDFA procedures were not contained in the SFAR No. 108 MU–2B flight training profiles. Including these procedures in subpart N of part 91 will allow operators of the MHI MU–2B series airplane to follow the most current procedures when operating an appropriately equipped MHI MU–2B series airplane. The new CDFA flight training supplements training already contained in the SFAR and provides an alternate procedure that may be used at the discretion of the pilot.

The flight training maneuver profiles A–7, B–7, C–7 in former Appendix D of the SFAR No. 108 were incorrect regarding the procedures for setting power and trim for the demonstration of the one-engine-inoperative maneuver with a loss of directional control. Furthermore, the maneuver profiles in the SFAR No. 108 (profiles A–8 through A–11, B–8 through B–11, and C–8 through C–11) required operators to perform all stall recoveries with a "minimal loss of altitude". This requirement has been removed from all FAA and industry training documents for other aircraft. This rule relocates and updates the content of SFAR No. 108 to this subpart in order to eliminate safety concerns resulting from mandating incorrect and out-of-date best practices for training in and operating the MU–2B.

With this action, all MU–2B training must take place under an FAA approved MU–2B training program. FAA approval of all MU–2B training programs will be based on whether that program meets the performance standards of § 91.1705(h). The FAA is also publishing an AC for the Mitsubishi MU–2B Training Program. This AC Appendix contains a recommended MU–2B training program which may be used by training providers to meet the requirements this subpart, or as a reference for the training providers to develop their own MU–2B training programs.

By following the AC training guidance, there will be no new training costs associated with this revised training guidance. The requalification and recurrent training hours for ground instruction and flight instruction remain the same. All MU–2B pilots will have to take training compliant with this subpart when their 12-month recurrent training requirement comes due, but not before. Nothing in this subpart mandates new training outside the existing currency cycle.

By following the AC training guidance, the change in existing training, results in no new costs. Thus, the cost of the rule will be minimal.

The FAA has, therefore, determined that this rule is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Public Law 96–354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation." To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

MU–2 aircraft are owned by a substantial number of small entities. However, the FAA believes that this rule does not have a significant economic impact on a substantial number of small entities for the following reasons. With this rule, the updated procedures and new profiles that are already in place for other FAA approved training programs will become mandatory for MU–2B pilots. By following the AC training guidance, the change in existing training, results in no new costs. Nothing in this rule mandates new training outside the existing cycle.

Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that the rule would protect safety and is not considered an unnecessary obstacle to foreign commerce.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $155 million in lieu of $100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number. The FAA has determined that there is a new requirement for information collection associated with this immediately adopted final rule and is requesting the Office of Management and Budget to grant an immediate emergency clearance on the paperwork package that it is submitting. Therefore, notification will be made to the public when a clearance is received. Following is a summary of the information collection activity.

Title: MU–2B Series Airplane Training Requirements Update

Summary/Need: This subpart requires qualified instructors providing MU–2B training in part 91 operations to submit a proposed MU–2B training program to the FAA for approval. This information collection is necessary to the FAA's mission to ensure aviation safety because it will enable the FAA to identify MU–2B qualified instructors providing training under this subpart and to oversee compliance.

Respondents: The respondents are an estimated 20-training providers operating under part 91 that are qualified to provide training for the MU–2B aircraft in accordance with subpart N of part 91.

Burden: The burden associated with this subpart is minimal to the part 91 training providers.

Use: It will enable the FAA to identify MU–2B qualified instructors currently providing training under SFAR No. 108 and oversee compliance with subpart N of part 91.

Frequency: Part 91 training providers will have to submit their training programs to the FAA every two years.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5–6.6 and involves no extraordinary circumstances.

VI. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this immediately adopted final rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

B. Executive Order 13211, Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this immediately adopted final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a "significant energy action" under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

VII. How To Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document may be obtained by using the Internet—

1. Search the Federal eRulemaking Portal (*http://www.regulations.gov*);
2. Visit the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/* or
3. Access the Government Publishing Office's Web page at: *http://www.gpo.gov/fdsys/*.

Copies may also be obtained by sending a request (identified by amendment or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9677.

B. Comments Submitted to the Docket

Comments received may be viewed by going to *http://www.regulations.gov* and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document, may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/*.

List of Subjects

14 CFR Part 35

Aircraft, Aviation safety.

14 CFR Part 91

Aircraft, Airmen, Airports, Aviation safety, Freight, Incorporation by reference, Reporting and recordkeeping requirements.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Alcohol abuse, Aviation safety, Drug abuse, Drug testing, Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

■ 1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44703, 44707, 44709–44711, 44729, 44903, 45102–45103, 45301–45302.

■ 2. Remove Special Federal Aviation Regulation No. 108.

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 3. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 1155, 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180), (126 Stat. 11).

■ 4. Effective November 7, 2017, remove Special Federal Aviation Regulation No. 108—Mitsubishi MU–2B Series Special Training, Experience, and Operating Requirements.

■ 5. Amend part 91 by adding subpart N to read as follows:

Subpart N—Mitsubishi MU–2B Series Special Training, Experience, and Operating Requirements

Sec.

91.1701 Applicability
91.1703 Compliance and eligibility.
91.1705 Required pilot training.
91.1707 Training program hours.
91.1709 Training program approval.
91.1711 Aeronautical experience.
91.1713 Instruction, checking, and evaluation.
91.1715 Currency requirements and flight review.
91.1717 Operating requirements.
91.1719 Credit for prior training.
91.1721 Incorporation by reference.

§ 91.1701 Applicability.

(a) On and after November 7, 2016, all training conducted in an MU–2B must follow an approved MU–2B training program that meets the standards of this subpart.

(b) This subpart applies to all persons who operate a Mitsubishi MU–2B series airplane, including those who act as pilot in command, act as second-in-command, or other persons who manipulate the controls while under the supervision of a pilot in command.

(c) This subpart also applies to those persons who provide pilot training for a Mitsubishi MU–2B series airplane. The requirements in this subpart are in addition to the requirements of parts 61, 91, and 135 of this chapter.

§ 91.1703 Compliance and eligibility.

(a) Except as provided in paragraph (b) of this section, no person may manipulate the controls, act as PIC, act as second-in-command, or provide pilot training for a Mitsubishi MU–2B series airplane unless that person meets the requirements of this subpart.

(b) A person who does not meet the requirements of this subpart may manipulate the controls of a Mitsubishi MU–2B series airplane if a pilot in command who meets the requirements of this subpart is occupying a pilot station, no passengers or cargo are carried on board the airplane, and the flight is being conducted for one of the following reasons—

(1) The pilot in command is providing pilot training to the manipulator of the controls;

(2) The pilot in command is conducting a maintenance test flight with a second pilot or certificated mechanic; or

(3) The pilot in command is conducting simulated instrument flight and is using a safety pilot other than the pilot in command who manipulates the controls for the purposes of § 91.109(b).

(c) A person is required to complete *Initial/transition training* if that person has fewer than—

(1) 50 hours of documented flight time manipulating the controls while serving as pilot in command of a Mitsubishi MU–2B series airplane in the preceding 24 months; or

(2) 500 hours of documented flight time manipulating the controls while serving as pilot in command of a Mitsubishi MU–2B series airplane.

(d) A person is eligible to receive *Requalification training* in lieu of Initial/transition training if that person has at least—

(1) 50 hours of documented flight time manipulating the controls while serving as pilot in command of a Mitsubishi MU–2B series airplane in the preceding 24 months; or

(2) 500 hours of documented flight time manipulating the controls while serving as pilot in command of a Mitsubishi MU–2B series airplane.

(e) A person is required to complete *Recurrent training* within the preceding 12 months. Successful completion of Initial/transition or Requalification training within the preceding 12 months satisfies the requirement of Recurrent training. A person must successfully complete Initial/transition training or Requalification training before being eligible to receive Recurrent training.

(f) Successful completion of Initial/transition training or Requalification training is a one-time requirement. A person may elect to retake Initial/transition training or Requalification training in lieu of Recurrent training.

(g) A person is required to complete Differences training in accordance with an FAA approved MU–2B training program if that person operates more than one MU–2B model as specified in § 91.1707(c).

§ 91.1705 Required pilot training.

(a) Except as provided in § 91.1703(b), no person may manipulate the controls, act as pilot in command, or act as second-in-command of a Mitsubishi MU–2B series airplane for the purpose of flight unless—

(1) The requirements for ground and flight training on Initial/transition, Requalification, Recurrent, and Differences training have been completed in accordance with an FAA approved MU–2B training program that meets the standards of this subpart; and

(2) That person's logbook has been endorsed in accordance with paragraph (f) of this section.

(b) Except as provided in § 91.1703(b), no person may manipulate the controls, act as pilot in command, or act as second-in-command, of a Mitsubishi MU–2B series airplane for the purpose of flight unless—

(1) That person satisfactorily completes, if applicable, annual Recurrent pilot training on the *Special Emphasis Items,* and all items listed in the *Training Course Final Phase Check* in accordance with an FAA approved MU–2B training program that meets the standards of this subpart; and

(2) That person's logbook has been endorsed in accordance with paragraph (f) of this section.

(c) Satisfactory completion of the competency check required by § 135.293 of this chapter within the preceding 12 calendar months may not be substituted for the Mitsubishi MU–2B series airplane annual recurrent flight training of this section.

(d) Satisfactory completion of a Federal Aviation Administration sponsored pilot proficiency program, as described in § 61.56(e) of this chapter may not be substituted for the Mitsubishi MU–2B series airplane annual recurrent flight training of this section.

(e) If a person complies with the requirements of paragraph (a) or (b) of this section in the calendar month before or the calendar month after the month in which compliance with these paragraphs are required, that person is considered to have accomplished the training requirement in the month the training is due.

(f) The endorsement required under paragraph (a) and (b) of this section must be made by—

(1) A certificated flight instructor or a simulator instructor authorized by a Training Center certificated under part 142 of this chapter and meeting the qualifications of § 91.1713; or

(2) For persons operating the Mitsubishi MU–2B series airplane for a 14 CFR part 119 certificate holder within the last 12 calendar months, the part 119 certificate holder's flight instructor if authorized by the FAA and if that flight instructor meets the requirements of § 91.1713.

(g) All training conducted for a Mitsubishi MU–2B series airplane must be completed in accordance with an MU–2B series airplane checklist that has been accepted by the Federal Aviation Administration's MU–2B Flight Standardization Board or the applicable MU–2B series checklist (incorporated by reference, see § 91.1721).

(h) MU–2B training programs must contain ground training and flight training sufficient to ensure pilot proficiency for the safe operation of MU–2B aircraft, including:

(1) A ground training curriculum sufficient to ensure pilot knowledge of MU–2B aircraft, aircraft systems, and procedures, necessary for safe operation; and

(2) Flight training curriculum including flight training maneuver profiles sufficient in number and detail to ensure pilot proficiency in all MU–2B operations for each MU–2B model in correlation with MU–2B limitations, procedures, aircraft performance, and MU–2B Cockpit Checklist procedures applicable to the MU–2B model being trained. A MU–2B training program must contain, at a minimum, the following flight training maneuver profiles applicable to the MU–2B model being trained:

(i) Normal takeoff with 5- and 20- degrees flaps;

(ii) Takeoff engine failure with 5- and 20- degrees flaps;

(iii) Takeoff engine failure on runway or rejected takeoff;

(iv) Takeoff engine failure after liftoff—unable to climb (may be completed in classroom or flight training device only);

(v) Steep turns;

(vi) Slow flight maneuvers;

(vii) One engine inoperative maneuvering with loss of directional control;

(viii) Approach to stall in clean configuration and with wings level;

(ix) Approach to stall in takeoff configuration with 15- to 30- degrees bank;

(x) Approach to stall in landing configuration with gear down and 40- degrees of flaps;

(xi) Accelerated stall with no flaps;

(xii) Emergency descent at low speed;

(xiii) Emergency descent at high speed;

(xiv) Unusual attitude recovery with the nose high;

(xv) Unusual attitude recovery with the nose low;

(xvi) Normal landing with 20- and 40- degrees flaps;

(xvii) Go around and rejected landing;

(xviii) No flap or 5- degrees flaps landing;

(xix) One engine inoperative landing with 5- and 20- degrees flaps;

(xx) Crosswind landing;

(xxi) Instrument landing system (ILS) and missed approach ;

(xxii) Two engine missed approach;

(xxiii) One engine inoperative ILS and missed approach;

(xxiv) One engine inoperative missed approach;

(xxv) Non-precision and missed approach;

(xxvi) Non-precision continuous descent final approach and missed approach;

(xxvii) One engine inoperative non-precision and missed approach;

(xxviii) One engine inoperative non-precision CDFA and missed approach;

(xxix) Circling approach at weather minimums;

(xxx) One engine inoperative circling approach at weather minimums.

(3) Flight training must include a final phase check sufficient to document pilot proficiency in the flight training maneuver profiles at the completion of training; and

(4) Differences training for applicable MU–2B model variants sufficient to ensure pilot proficiency in each model operated. Current MU–2B differences requirements are specified in § 91.1707(c). A person must complete Differences training if a person operates more than one MU–2B model as specified in § 91.1707(c). Differences training between the factory type design K and M models of the MU–2B airplane, and the factory type design J and L models of the MU–2B airplane, may be accomplished with Level A training. All other factory type design differences training must be accomplished with Level B training unless otherwise specified in § 91.1707(c) . A Level A or B differences training is not a recurring annual requirement. Once a person has completed Initial Level A or B Differences training between the applicable different models, no additional differences training between those models is required.

(5) Icing training sufficient to ensure pilot knowledge and safe operation of the MU–2B aircraft in icing conditions as established by the FAA;

(6) Ground and flight training programs must include training hours identified by § 91.1707(a) for ground instruction, § 91.1707(b) for flight instruction, and § 91.1707(c) for differences training.

(i) No training credit is given for second-in-command training and no credit is given for right seat time under this program. Only the sole manipulator of the controls of the MU–2B airplane, flight training device, or Level C or D simulator can receive training credit under this program;

(ii) An MU–2B airplane must be operated in accordance with an FAA approved MU–2B training program that meets the standards of this subpart and the training hours in § 91.1707.

(7) Endorsements given for compliance with paragraph (f) of this section must be appropriate to the content of that specific MU–2B training program's compliance with standards of this subpart.

§ 91.1707 Training program hours.

(a) Ground instruction hours are listed in the following table:

Initial/transition	Requalificaton	Recurrent
20 hours	12 hours	8 hours.

(b) Flight instruction hours are listed in the following table:

Initial/transition	Requalification	Recurrent
12 hours with a minimum of 6 hours at level E	8 hours level C or level E	4 hours at level E, or 6 hours at level C.

(c) Differences training hours are listed in the following table:

2 factory type design models concurrently	1.5 hours required at level B.
More than 2 factory type design models concurrently	3 hours at level B.
Each additional factory type design model added separately	1.5 hours at level B.

(d) Definitions of levels of training as used in this subpart:

(1) LEVEL A Training—Training that is conducted through self-instruction by the pilot.

(2) LEVEL B Training—Training that is conducted in the classroom environment with the aid of a qualified instructor who meets the requirements of this subpart.

(3) LEVEL C Training—Training that is accomplished in an FAA-approved Level 5 or 6 flight training device. In addition to the basic FTD requirements, the FTD must be representative of the MU–2B cockpit controls and be specifically approved by the FAA for the MU–2B airplane.

(4) Level E Training—Training that must be accomplished in the MU–2B airplane, Level C simulator, or Level D simulator.

§ 91.1709 Training program approval.

To obtain approval for an MU–2B training program, training providers must submit a proposed training program to the Administrator.

(a) Only training programs approved by the Administrator may be used to satisfy the standards of this subpart.

(b) For part 91 training providers, training programs will be approved for 24 months, unless sooner superseded or rescinded.

(c) The Administrator may require revision of an approved MU–2B training program at any time.

(d) A training provider must present its approved training program and FAA approval documentation to any representative of the Administrator, upon request.

§ 91.1711 Aeronautical experience.

No person may act as a pilot in command of a Mitsubishi MU–2B series airplane for the purpose of flight unless that person holds an airplane category and multi-engine land class rating, and has logged a minimum of 100 flight hours of PIC time in multi-engine airplanes.

§ 91.1713 Instruction, checking, and evaluation.

(a) *Flight Instructor (Airplane).* No flight instructor may provide instruction or conduct a flight review in a Mitsubishi MU–2B series airplane unless that flight instructor

(1) Meets the pilot training and documentation requirements of § 91.1705 before giving flight instruction in the Mitsubishi MU–2B series airplane;

(2) Meets the currency requirements of §§ 91.1715(a) and 91.1715(c)

(3) Has a minimum total pilot time of 2,000 pilot-in-command hours and 800 pilot-in-command hours in multiengine airplanes; and

(4) Has:

(i) 300 pilot-in-command hours in the Mitsubishi MU–2B series airplane, 50 hours of which must have been within the preceding 12 months; or

(ii) 100 pilot-in-command hours in the Mitsubishi MU–2B series airplane, 25 hours of which must have been within the preceding 12 months, and 300 hours providing instruction in a FAA-approved Mitsubishi MU–2B simulator or FAA-approved Mitsubishi MU–2B flight training device, 25 hours of which must have been within the preceding 12 months.

(b) *Flight Instructor (Simulator/Flight Training Device).* No flight instructor may provide instruction for the Mitsubishi MU–2B series airplane unless that instructor meets the requirements of this paragraph—

(1) Each flight instructor who provides flight training for the Mitsubishi MU–2B series airplane must meet the pilot training and documentation requirements of § 91.1705 before giving flight instruction for the Mitsubishi MU–2B series airplane;

(2) Each flight instructor who provides flight training for the Mitsubishi MU–2B series airplane must meet the currency requirements of § 91.1715(c) before giving flight instruction for the Mitsubishi MU–2B series airplane;

(3) Each flight instructor who provides flight training for the Mitsubishi MU–2B series airplane must have:

(i) A minimum total pilot time of 2000 pilot–in-command hours and 800 pilot-in-command hours in multiengine airplanes; and

(ii) Within the preceding 12 months, either 50 hours of Mitsubishi MU–2B series airplane pilot-in-command experience or 50 hours providing simulator or flight training device instruction for the Mitsubishi MU–2B.

(c) *Checking and evaluation.* No person may provide checking or evaluation for the Mitsubishi MU–2B series airplane unless that person meets the requirements of this paragraph—

(1) For the purpose of checking, designated pilot examiners, training center evaluators, and check airmen must have completed the appropriate training in the Mitsubishi MU–2B series airplane in accordance with § 91.1705;

(2) For checking conducted in the Mitsubishi MU–2B series airplane, each designated pilot examiner and check airman must have 100 hours pilot-in-command flight time in the Mitsubishi MU–2B series airplane and maintain currency in accordance with § 91.1715.

§ 91.1715 Currency requirements and flight review.

(a) The takeoff and landing currency requirements of § 61.57 of this chapter must be maintained in the Mitsubishi MU–2B series airplane. Takeoff and landings in other multiengine airplanes do not meet the takeoff landing currency requirements for the Mitsubishi MU–2B series airplane. Takeoff and landings in either the short-body or long-body Mitsubishi MU–2B model airplane may be credited toward takeoff and landing currency for both Mitsubishi MU–2B model groups.

(b) Instrument experience obtained in other category and class of aircraft may be used to satisfy the instrument currency requirements of § 61.57 of this chapter for the Mitsubishi MU–2B series airplane.

(c) Satisfactory completion of a flight review to satisfy the requirements of § 61.56 of this chapter is valid for operation of a Mitsubishi MU–2B series airplane only if that flight review is conducted in a Mitsubishi MU–2B series airplane or an MU–2B Simulator approved for landings with an approved course conducted under part 142 of this chapter. The flight review for Mitsubishi MU–2B series airplanes must include the *Special Emphasis Items,* and all items listed in the *Training Course Final Phase Check* in accordance with an approved MU–2B Training Program.

(d) A person who successfully completes the Initial/transition, Requalification, or Recurrent training requirements under § 91.1705 of this chapter also meet the requirements of § 61.56 of this chapter and need not accomplish a separate flight review provided that at least 1 hour of the flight training was conducted in the Mitsubishi MU–2B series airplane or an MU–2B Simulator approved for landings with an approved course conducted under part 142 of this chapter.

§ 91.1717 Operating requirements.

(a) Except as provided in paragraph (b) of this section, no person may operate a Mitsubishi MU–2B airplane in single pilot operations unless that airplane has a functional autopilot.

(b) A person may operate a Mitsubishi MU–2B airplane in single pilot operations without a functional autopilot when—

(1) Operating under day visual flight rule requirements; or

(2) Authorized under a FAA approved minimum equipment list for that airplane, operating under instrument flight rule requirements in daytime visual meteorological conditions.

(c) No person may operate a Mitsubishi MU–2B series airplane unless a copy of the appropriate Mitsubishi Heavy Industries MU–2B Airplane Flight Manual is carried on board the airplane and is accessible during each flight at the pilot station.

(d) No person may operate a Mitsubishi MU–2B series airplane unless an MU–2B series airplane checklist, appropriate for the model being operated and accepted by the Federal Aviation Administration MU–2B Flight Standardization Board, is accessible for each flight at the pilot station and is used by the flight crewmembers when operating the airplane.

(e) No person may operate a Mitsubishi MU–2B series airplane contrary to the standards of this subpart.

(f) If there are any differences between the training and operating requirements of this subpart and the MU–2B Airplane Flight Manual's procedures sections (Normal, Abnormal, and Emergency) and the MU–2B airplane series checklist incorporated by reference in § 91.1721, the person operating the airplane must operate the airplane in accordance with the training specified in this subpart.

§ 91.1719 Credit for prior training.

Initial/transition, requalification, recurrent or Level B differences training conducted prior to November 7, 2016, compliant with SFAR No. 108, Section 3 of this part, is considered to be compliant with this subpart, if the student met the eligibility requirements for the applicable category of training and the student's instructor met the experience requirements of this subpart.

§ 91.1721 Incorporation by reference.

(a) The Mitsubishi Heavy Industries MU–2B Cockpit Checklists are incorporated by reference into this part. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at U.S. Department of Transportation, Docket Management Facility, Room W 12–140, West Building Ground Floor, 1200 New Jersey Ave. SE., Washington, DC 20590–0001, or at the National Archives and Records Administration, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) Turbine Aircraft Services, Inc., 4550 Jimmy Doolittle Drive, Addison, Texas 75001, USA.

(1) Mitsubishi Heavy Industries MU–2B Checklists:

(i) Cockpit Checklist, Model MU–2B–60, Type Certificate A10SW, MHI Document No. YET06220C, accepted by FSB on February 12, 2007.

(ii) Cockpit Checklist, Model MU–2B–40, Type Certificate A10SW, MHI Document No. YET06256A, accepted by FSB on February 12, 2007.

(iii) Cockpit Checklist, Model MU–2B–36A, Type Certificate A10SW, MHI Document No. YET06257B, accepted by FSB on February 12, 2007.

(iv) Cockpit Checklist, Model MU–2B–36, Type Certificate A2PC, MHI Document No. YET06252B, accepted by FSB on February 12, 2007.

(v) Cockpit Checklist, Model MU–2B–35, Type Certificate A2PC, MHI Document No. YET06251B, accepted by FSB on February 12, 2007.

(vi) Cockpit Checklist, Model MU–2B–30, Type Certificate A2PC, MHI Document No. YET06250A, accepted by FSB on March 2, 2007.

(vii) Cockpit Checklist, Model MU–2B–26A, Type Certificate A10SW, MHI Document No. YET06255A, accepted by FSB on February 12, 2007.

(viii) Cockpit Checklist, Model MU–2B–26, Type Certificate A2PC, MHI Document No. YET06249A, accepted by FSB on March 2, 2007.

(ix) Cockpit Checklist, Model MU–2B–26, Type Certificate A10SW, MHI Document No. YET06254A, accepted by FSB on March 2, 2007.

(x) Cockpit Checklist, Model MU–2B–25, Type Certificate A10SW, MHI Document No. YET06253A, accepted by FSB on March 2, 2007.

(xi) Cockpit Checklist, Model MU–2B–25, Type Certificate A2PC, MHI Document No. YET06248A, accepted by FSB on March 2, 2007.

(xii) Cockpit Checklist, Model MU–2B–20, Type Certificate A2PC, MHI Document No. YET06247A, accepted by FSB on February 12, 2007.

(xv) Cockpit Checklist, Model MU–2B–15, Type Certificate A2PC, MHI Document No. YET06246A, accepted by FSB on March 2, 2007.

(xvi) Cockpit Checklist, Model MU–2B–10, Type Certificate A2PC, MHI Document No. YET06245A, accepted by FSB on March 2, 2007.

(xvii) Cockpit Checklist, Model MU–2B, Type Certificate A2PC, MHI Document No. YET06244A, accepted by FSB on March 2, 2007.

(2) [Reserved]

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 6. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 41706, 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722, 44730, 45101–45105; Pub. L. 112–95, 126 Stat. 58 (49 U.S.C. 44730).

■ 7. Remove Special Federal Aviation Regulation No. 108.

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC, on July 11, 2016.

Michael P. Huerta,

Administrator.

[FR Doc. 2016–21356 Filed 9–6–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 160617543–6543–01]

RIN 0694–AH02

Russian Sanctions: Addition of Certain Entities to the Entity List

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) by adding eighty-one entities under eighty-six entries to the Entity List. The eighty-one entities who are added to the Entity List have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. BIS is taking this action to ensure the efficacy of existing sanctions on the Russian Federation (Russia) for violating international law and fueling the conflict in eastern Ukraine. These entities will be listed on the Entity List under the destinations of the Crimea region of Ukraine, Hong Kong, India, and Russia.

DATES: This rule is effective September 7, 2016.

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Email: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Entity List (Supplement No. 4 to Part 744 of the EAR) identifies entities and other persons reasonably believed to be involved in, or that pose a significant risk of being or becoming involved in, activities that are contrary to the national security or foreign policy of the United States. The EAR imposes additional licensing requirements on, and limits the availability of most license exceptions for, exports, reexports, and transfers (in-country) to those persons or entities listed on the Entity List. The license review policy for each listed entity is identified in the License Review Policy column on the Entity List and the impact on the availability of license exceptions is described in the **Federal Register** notice adding entities or other persons to the Entity List. BIS places entities on the Entity List based on certain sections of part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

The End-user Review Committee (ERC) is composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy, and where appropriate, the Treasury. The ERC makes decisions to add an entry to the Entity List by majority vote and to remove or modify an entry by unanimous vote. The Departments represented on the ERC have approved these changes to the Entity List.

Entity List Additions

Additions to the Entity List

This rule implements the decision of the ERC to add eighty-one entities under eighty-six entries to the Entity List. These eighty-one entities are being added on the basis of § 744.11 (License requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States) of the EAR. The eighty-six entries being added to the Entity List consist of seven entries in the Crimea region of Ukraine, two entries in Hong Kong, two entries in India, and seventy-five entries in Russia. There are eighty-six entries for the eighty-one entities because five entities are listed in multiple locations, resulting in five additional entries.

Under § 744.11(b) (Criteria for revising the Entity List) of the EAR, persons for whom there is reasonable cause to believe, based on specific and articulable facts, have been involved, are involved, or pose a significant risk of being or becoming involved in, activities that are contrary to the national security or foreign policy interests of the United States and those acting on behalf of such persons may be added to the Entity List. The entities being added to the Entity List have been determined to be involved in activities that are contrary to the national security or foreign policy interests of the United States. Specifically, in this rule, BIS adds entities to the Entity List for violating international law and fueling the conflict in eastern Ukraine. These additions ensure the efficacy of existing sanctions on Russia. The particular additions to the Entity List and related authorities are as follows.

A. Entity Additions Consistent With Executive Order 13660

One entity is added based on activities that are described in Executive Order 13660 (79 FR 13493), *Blocking Property of Certain Persons Contributing to the Situation in Ukraine,* issued by the President on March 6, 2014. As described in the Order, the President found that the actions and policies of persons who have asserted governmental authority in Crimea without the authorization of the Government of Ukraine undermine democratic processes and institutions in Ukraine; threaten its peace, security, stability, sovereignty, and territorial integrity; and contribute to the misappropriation of its assets; and thereby constitute an unusual and extraordinary threat to the national security and foreign policy of the United States. The President also declared a national emergency to deal with that threat.

Executive Order 13660 blocks all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person (including any foreign branch) of any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, to be responsible for or complicit in, or to have engaged in, directly or indirectly, misappropriation of state assets of Ukraine or of an economically significant entity in Ukraine, among other activities. Under Section 8 of the Order, all agencies of the United States Government are directed to take all appropriate measures within their authority to carry out the provisions of the Order.

The Department of the Treasury's Office of Foreign Assets Control, pursuant to Executive Order 13660, has designated the following entity: Salvation Committee of Ukraine, as being within the scope of the Order. In conjunction with that designation, BIS adds Salvation Committee of Ukraine to the Entity List under this rule and imposes a license requirement for exports, reexports, or transfers (in-country) of all items subject to the EAR to this blocked entity. This license requirement implements an appropriate measure within the authority of the EAR to carry out the provisions of Executive Order 13660.

B. Entity Additions Consistent With Executive Order 13661

Eleven entities are added based on activities that are described in Executive Order 13661 (79 FR 15533), *Blocking Property of Additional Persons Contributing to the Situation in Ukraine,* issued by the President on March 16, 2014. This Order expanded the scope of the national emergency declared in Executive Order 13660, finding that the actions and policies of the Government of the Russian Federation with respect to Ukraine—including the deployment of Russian military forces in the Crimea region of Ukraine—undermine democratic processes and institutions in Ukraine; threaten its peace, security, stability, sovereignty, and territorial integrity; and contribute to the misappropriation of its assets, and thereby constitute an unusual and extraordinary threat to the national security and foreign policy of the United States.

Executive Order 13661 includes a directive that all property and interests in property that are in the United States, that hereafter come within the United States, or that are or thereafter come within the possession or control of any United States person (including any foreign branch) of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: Persons determined by the Secretary of the Treasury, in consultation with the Secretary of State to have either materially assisted, sponsored or provided financial, material or technological support for, or goods and services to or in support of a senior official of the government of the Russian Federation or to operate in the defense or related materiel sector in Russia. Under Section 8 of the Order, all agencies of the United States Government are directed to take all appropriate measures within their authority to carry out the provisions of the Order.

BIS, pursuant to Executive Order 13661, and in consultation with the Departments of State, Defense, Energy, and the Treasury, has designated the following eleven entities: Angstrem-M; Giovan Ltd.; Joint Stock Company Angstrem; Joint Stock Company Angstrem-T; Joint Stock Company Foreign Economic Association (FEA) Radioexport; Joint Stock Company Perm Scientific Industrial Instrument-Making Company (PNPPK); Joint Stock Company Mikron; Joint Stock Company Research and Production Company Micran; NPC Granat; Technopole Company; and Technopole Ltd. The eleven entities added to the Entity List under Executive Order 13661 meet the criteria of Section 1, subparagraph B of the Order because they operate in Russia's arms or related materiel sector. BIS adds all eleven of those entities to the Entity List under this rule, and imposes a license requirement for exports, reexports, or transfers (in-country) of all items subject to the EAR to these entities. This license requirement implements an appropriate measure within the authority of the EAR to carry out the provisions of Executive Order 13661.

C. Entity Additions Consistent With Executive Order 13662

Fifty-one entities are added to the Entity List based on activities that are described in Executive Order 13662 (79 FR 16169), *Blocking Property of Additional Persons Contributing to the Situation in Ukraine,* issued by the President on March 20, 2014. This Order expanded the scope of the national emergency declared in Executive Order 13660 of March 6, 2014 and expanded in Executive Order 13661 of March 16, 2014. Specifically, Executive Order 13662 expanded the scope to include sectors of the Russian economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State, such as financial services, energy, metals and mining, engineering, and defense and related materiel. Under Section 8 of the Order, all agencies of the United States Government are directed to take all appropriate measures within their authority to carry out the provisions of the Order.

The Department of the Treasury's Office of Foreign Assets Control, pursuant to Executive Order 13662, on behalf of the Secretary of the Treasury, and in consultation with the Secretary of State, has designated the following fifty-one entities as operating in the energy sector of Russia and owned or controlled by, or have acted or purported to act for or on behalf of, directly or indirectly, Gazprom, OAO, a person whose property and interests are blocked pursuant to the Order: Achim Development, OOO; Daltransgaz, OAO; Druzhba, AO; Gaz-Oil, OOO; Gazmash, AO; Gazprom Dobycha Irkutsk, OOO; Gazprom Dobycha Krasnodar, OOO; Gazprom Dobycha Kuznetsk, OOO; Gazprom Dobycha Nadym, OOO; Gazprom Dobycha Noyabrsk, OOO; Gazprom Dobycha Urengoi, OOO; Gazprom Dobycha Yamburg, OOO; Gazprom Energo, OOO; Gazprom Flot, OOO; Gazprom Gaznadzor, OOO; Gazprom Gazobezopasnost, OOO; Gazprom Geologorazvedka, OOO; Gazprom Inform, OOO; Gazprom Invest, OOO; Gazprom Kapital, OOO; Gazprom Komplektatsiya, OOO; Gazprom Mezhregiongaz, OOO; Gazprom Pererabotka, OOO; Gazprom Personal, OOO; Gazprom Promgaz, AO; Gazprom Russkaya, OOO; Gazprom Sotsinvest, OOO; Gazprom Svyaz, OOO; Gazprom Telekom, OOO; Gazprom Transgaz Kazan, OOO; Gazprom Transgaz Krasnodar, OOO; Gazprom Transgaz Makhachkala, OOO; Gazprom Transgaz Nizhni Novgorod, OOO; Gazprom Transgaz Samara, OOO; Gazprom Transgaz Sankt-Peterburg, OOO; Gazprom Transgaz Saratov, OOO; Gazprom Transgaz Stavropol, OOO; Gazprom Transgaz Surgut, OOO; Gazprom Transgaz Tomsk, OOO; Gazprom Transgaz Ufa, OOO; Gazprom Transgaz Ukhta, OOO; Gazprom Transgaz Volgograd, OOO; Gazprom Transgaz Yugorsk, OOO; Gazprom Tsentrremont, OOO; Gazprom Vniigaz, OOO; Kamchatgazprom OAO; Krasnoyarskgazprom, PAO; Lazurnaya, OOO; Niigazekonomika, OOO; Vostokgazprom, OAO; and Yamalgazinvest, ZAO. In conjunction with that designation, BIS adds all fifty-one of the entities to the Entity List under this rule and imposes a license requirement for exports, reexports, or transfers (in-country) of all items subject to the EAR to these blocked persons, when the exporter, reexporter or transferor knows that the item will be used directly or indirectly in exploration for, or production of, oil or gas in Russian deepwater (greater than 500 feet) or Arctic offshore locations or shale formations in Russia, or is unable to determine whether the item will be used in such projects. All of these persons are subsidiaries of Gazprom, which was added to the Entity List on September 17, 2014 (79 FR 55608). This license requirement implements an appropriate measure within the authority of BIS to carry out the provisions of Executive Order 13662.

D. Entity Additions Consistent With Executive Order 13685

Eighteen entities are added based on activities that are described in Executive Order 13685 (79 FR 77357), *Blocking Property of Certain Persons and Prohibiting Certain Transactions with Respect to the Crimea Region of Ukraine,* issued by the President on December 19, 2014. This Order took additional steps to address the Russian occupation of the Crimea region of Ukraine with respect to the national emergency declared in Executive Order 13660 of March 6, 2014, and expanded in Executive Order 13661 of March 16, 2014 and Executive Order 13662 of March 20, 2014. In particular, Executive Order 13685 prohibited the export, reexport, sale or supply, directly or indirectly, from the United States or by a U.S. person, wherever located, of any goods, services, or technology to the Crimea region of Ukraine. Under Section 10 of the Order, all agencies of the United States Government are directed to take all appropriate measures within their authority to carry out the provisions of the Order.

The Department of the Treasury's Office of Foreign Assets Control, pursuant to Executive Order 13685 on behalf of the Secretary of the Treasury and in consultation with the Secretary of State, has designated the following eighteen entities as operating in the Crimea region of Ukraine: AO 'Institute Giprostroymost—Saint-Petersburg'; CJSC Sovmortrans; FAU 'Glavgosekspertiza Rossii'; FKU Uprdor 'Taman'; Federal SUE Shipyard 'Morye'; LLC Koksokhimtrans; OAO Ship Repair Center 'Zvezdochka'; OJSC Sovfracht; OAO 'Uranis-Radiosistemy'; OOO 'DSK'; OOO Shipyard 'Zaliv'; OOO 'STG–EKO'; PJSC Mostotrest; SGM Most OOO; SMT–K; Sovfracht Managing Company, LLC; Sovfracht-Sovmortrans Group; and Sue RC 'Feodosia Optical Plant'. In conjunction with that designation, BIS adds all eighteen of these entities to the Entity List under this rule and imposes a license requirement for exports, reexports, or transfers (in-country) of all items subject to the EAR to these blocked persons. This license requirement implements an appropriate measure within the authority of the EAR to carry out the provisions of Executive Order 13685.

For the thirty entities under thirty-five entries added to the Entity List based on activities that are described in Executive Orders 13660, 13661, or 13685, BIS imposes license requirement for all items subject to the EAR and a license review policy of presumption of denial. The license requirement applies to any transaction in which items are to be exported, reexported, or transferred (in-country) to any of the entities or in which such entities act as purchaser, intermediate consignee, ultimate consignee, or end-user.

For the fifty-one Russian subsidiaries of Gazprom, OAO, that are added to the Entity List based on activities described in Executive Order 13662, the BIS imposes a license requirement for the export, reexport or transfers (in-country) of all items subject to the EAR to those companies when the exporter, reexporter or transferor knows that the item will be used directly or indirectly in exploration for, or production of, oil or gas in Russian deepwater (greater than 500 feet) or Arctic offshore locations or shale formations in Russia, or is unable to determine whether the item will be used in such projects. License applications for the fifty-one Russian subsidiaries will be reviewed with a presumption of denial when the items are for use directly or indirectly for exploration or production from deepwater (greater than 500 feet), Arctic offshore, or shale projects in Russia that have the potential to produce oil. In addition, no license exceptions are available for exports, reexports, or transfers (in-country) to any of the entities being added to the Entity List in this rule.

The acronyms "a.k.a." (also known as) and "f.k.a." (formerly known as) are used in entries on the Entity List to help exporters, reexporters and transferors to better identify listed persons on the Entity List.

This final rule adds the following eighty-one entities under eighty-six entries to the Entity List:

Crimea Region of Ukraine

(1) *FAU 'Glavgosekspertiza Rossii',* a.k.a., the following three aliases:

—Federal Autonomous Institution 'Main Directorate of State Examination';
—General Board of State Expert Review; *and*
—Glavgosekspertiza.

13 Demidova Street, Sevastopol, Crimea, Ukraine; *and* 10 Vokzalnaya Street, Sevastopol, Crimea, Ukraine (See alternate address under Russia);

(2) *Federal SUE Shipyard 'Morye',* a.k.a., the following four aliases:

—Federal State Unitary Enterprise SZ Morye;
—FSUE SZ 'Morye';
—Morye Shipyard; *and*
—More Shipyard.

1 Desantnikov Street, Feodosia, Crimea 98176, Ukraine;

(3) *OAO 'Uranis-Radiosistemy',* a.k.a., the following three aliases:

—OJSC 'Uranis Radio Systems';
—OJSC Uranis-Radiosistemy; *and*
—Uranis-Radiosistemy OAO.

33 G, Vakulenchuk Street, Sevastopol, Crimea 99053, Ukraine;

(4) *OAO Ship Repair Center 'Zvezdochka',* a.k.a., the following four aliases:

—'Zvezdochka' Shipyard;
—AO Ship Repair Center 'Zvezdochka';
—Joint Stock Company Ship Repair Center 'Zvezdochka'; *and*
—Ship Repair Center Zvezdochka.

13 Geroyev Sevastopolya Street, Sevastopol, Crimea 99001, Ukraine (See alternate address in Russia);

(5) *OOO Shipyard 'Zaliv'* (f.k.a., AO Shipyard 'Zaliv'; JSC Shipyard 'Zaliv'; JSC Zaliv Shipyard; *and* OJSC Zaliv Shipyard), a.k.a., the following two aliases:

—LLC Shipyard 'Zaliv'; *and*
—Zaliv Shipyard LLC.

4 Tankistov Street, Kerch, Crimea 98310, Ukraine;

(6) *SMT–K,* a.k.a., the following six aliases:

—Krym SMT OOO LLC;
—LLC CMT Crimea;
—OOO 'CMT–K';
—OOO 'SMT–K';
—SMT-Crimea; *and*
—Sovmortrans-Crimea.

ul. Zoi Zhiltsovoy, d. 15, office 51, Simferopol, Crimea, Ukraine; *and* Vokzalnoye Highway 140, Kerch, Ukraine (See Alternate address under Russia); *and*

(7) *Sue RC 'Feodosia Optical Plant',* a.k.a., the following two aliases:

—Feodosia State Optical Plant; *and*
—State Optical Plant—Feodosia.

Feodosia State Optical Plant, 11 Moskovskaya Street, Feodosia, Crimea 98100, Ukraine.

Hong Kong

(1) *Giovan Ltd.,* Suite 1505–6, Albion Plaza, 2–6 Granville Road, TsimShatSui, Kowloon, Hong Kong (See alternate address under India); *and*

(2) *Technopole Ltd.,* Suite 1505–6, Albion Plaza, 2–6 Granville Road, TsimShatSui, Kowloon, Hong Kong (See alternate address under India).

India

(1) *Giovan Ltd.,* C–16A, New Multan Nagar, Surya Enclave, New Rohtak Road 099 Paschim Vihar, New Delhi, India 110056 (See alternate address under Hong Kong); *and*

(2) *Technopole Ltd.,* D–79, New Multan Nagar, Surya Enclave, New Rohtak Road 099 Paschim Vihar, New Delhi, India 110056 (See alternate address under Hong Kong).

Russia

(1) *Achim Development, OOO,* a.k.a., the following two aliases:

—Achim Development; *and*
—Obshchestvo S Ogranichennoi Otvetstvennostyu 'Achim Development'.

d.7 ul.Promyshlennaya, Novy Urengoi, Yamalo-Nenetski a.o. 629306, Russia;

(2) *Angstrem-M,* Dom 4, Stroennie 3, Proezd 4806, Zelenograd, Russia 124460;

(3) *AO 'Institute Giprostroymost—Saint-Petersburg'* (f.k.a., Institut

Giprostroimost-Sankt-Peterburg, ZAO; *and* ZAO 'Institute Giprostroymost Saint-Petersburg'), a.k.a., the following three aliases:

—AO 'Institute Giprostroymost—Sankt-Peterburg';
—JSC 'Institute Giprostroymost—Saint-Petersburg;' *and*
—JSC 'Institute Giprostroymost—Sankt-Peterburg'.

7 Yablochkova Street, St. Petersburg 197198, Russia;

(4) *CJSC Sovmortrans,* a.k.a., the following one alias:

—Sovmortrans CJSC.

Rakhmanovskiy lane, 4, bld.1, Morskoy House, Moscow 127994, Russia;

(5) *Daltransgaz, OAO,* a.k.a., the following two aliases:

—Daltransgaz; *and*
—Otkrytoe Aktsionernoe Obshchestvo 'Daltransgaz'.

d. 1 ul.Solnechnaya S. Ilinka, Khabarovski Raion Khabarovski krai 680509, Russia;

(6) *Druzhba, AO,* a.k.a., the following two aliases:

—Aktsionernoe Obshchestvo 'Druzhba'; *and*
—Druzhba.

Rogozinino, Moscow 143397, Russia;

(7) *FAU 'Glavgosekspertiza Rossii',* a.k.a., the following three aliases:

—Federal Autonomous Institution 'Main Directorate of State Examination';
—General Board of State Expert Review; *and*
—Glavgosekspertiza.

Furkasovskiy Lane, building 6, Moscow 101000, Russia (See alternate address under Crimea region of Ukraine);

(8) *FKU Uprdor 'Taman',* a.k.a., the following one alias:

—Federal State Institution Management of Federal Roads 'Taman'.

3 Revolution Avenue, Anapa, Krasnodar 353440, Russia;

(9) *Gaz-Oil, OOO* (f.k.a., Zakrytoe Aktsionernoe Obshchestvo Gaz Oil), a.k.a., the following two aliases:

—Gaz-Oil; *and*
—Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gaz-Oil'.

d.10 B ul.Nametkina, Moscow 117420, Russia;

(10) *Gazmash, AO* (f.k.a., Dochernee Otkrytoe Aktsionernoe Obshchestvo Gazmash Otkrytogo Aktsionernogo Obshchestva Gazprom), a.k.a., the following two aliases:

—Aktsionernoe Obshchestvo 'Gazmash'; *and*
—Gazmash.

d. 54 korp. 1 litera A pomeshch prospekt Primorski, St. Petersburg 197374, Russia;

(11) *Gazprom Dobycha Irkutsk, OOO* (f.k.a., Otkrytoe Aktsionernoe Obshchestvo Irkutskgazprom), a.k.a., the following two aliases:

—Gazprom Dobycha Irkutsk; *and*
—Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Dobycha Irkutsk'.

d.14 ul.Nizhnyaya Naberezhnaya, Irkutsk, Irkutskaya obl 664011, Russia;

(12) *Gazprom Dobycha Krasnodar, OOO,* a.k.a., the following two aliases:

—Gazprom Dobycha Krasnodar; *and*
—Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Dobycha Krasnodar'.

d.53 ul.Shosse Neftyanikov, Krasnodar, Krasnodarski krai 350051, Russia;

(13) *Gazprom Dobycha Kuznetsk, OOO,* a.k.a., the following two aliases:

—Gazprom Dobycha Kuznetsk; *and*
—Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Dobycha Kuznetsk'.

d.4 prospekt Oktyabrski, Kemerovo, Kemerovskaya obl 650066, Russia;

(14) *Gazprom Dobycha Nadym, OOO,* a.k.a., the following two aliases:

—Gazprom Dobycha Nadym; *and*
—Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Dobycha Nadym'.

d.1 ul.Zvereva, Nadym, Yamalo-Nenetski a.o. 629730, Russia;

(15) *Gazprom Dobycha Noyabrsk, OOO,* a.k.a., the following two aliases:

—Gazprom Dobycha Noyabrsk; *and*
—Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Dobycha Noyabrsk'.

d.20 ul. Respubliki, Noyabrsk, Yamalo-Nenetski a.o. 629802, Russia;

(16) *Gazprom Dobycha Urengoi, OOO,* a.k.a., the following two aliases:

—Gazprom Dobycha Urengoy; *and*
—Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Dobycha Urengoi'.

d.8 ul.Zheleznodorozhnaya, Novy Urengoi, Yamalo-Nenetski a.o. 629307, Russia;

(17) *Gazprom Dobycha Yamburg, OOO,* a.k.a., the following two aliases:

—Gazprom Dobycha Yamburg; *and*
—Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Dobycha Yamburg'.

d.9 ul. Geologorazvedchikov, Novy Urengoi, Yamalo-Nenetski a.o 629306, Russia;

(18) *Gazprom Energo, OOO,* a.k.a., the following two aliases:

—Gazprom Energo; *and*
—Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Energo'.

8 Korp. 1 ul.Stroitelei, Moscow 117939, Russia;

(19) *Gazprom Flot, OOO* (f.k.a., Obshchestvo S Ogranichennoi Otvetstvennostyu Gazflot), a.k.a., the following two aliases:

—Gazprom Flot; *and*
—Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Flot'.

d. 12 A ul.Nametkina, Moscow 117420, Russia;

(20) *Gazprom Gaznadzor, OOO,* a.k.a., the following two aliases:

—Gazprom Gaznadzor; *and*
—Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Gaznadzor'.

41 str. 1 prospekt Vernadskogo, Moscow 119415, Russia;

(21) *Gazprom Gazobezopasnost, OOO,* a.k.a., the following two aliases:

—Gazprom Gazobezopasnost; *and*
—Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Gazobezopasnost'.

d. 8 korp. 1 ul.Stroitelei, Moscow 119311, Russia;

(22) *Gazprom Geologorazvedka, OOO* (f.k.a., Obshchestvo S Ogranichennoi Otvetstvennostyu Gazprom Dobycha Krasnoyarsk), a.k.a., the following two aliases:

—Gazprom Geologorazvedka; *and*
—Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Geologorazvedka'.

d.70 ul.Gertsena, Tyumen, Tyumenskaya obl. 625000, Russia;

(23) *Gazprom Inform, OOO* (f.k.a., Zakrytoe Aktsionernoe Obshchestvo Informgazinvest), a.k.a., the following two aliases:

—Gazprom Inform; *and*
—Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Inform'.

d. 13 str. 3 ul.Bolshaya Cheremushkinskaya, Moscow 117447, Russia;

(24) *Gazprom Invest, OOO,* a.k.a., the following two aliases:

—Gazprom Invest; *and*
—Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Invest'.

d. 6 litera D ul.Startovaya, St. Petersburg 196210, Russia;

(25) *Gazprom Kapital, OOO* (f.k.a., Obshchestvo S Ogranichennoi Otvetstvennostyu Kap Infin), a.k.a., the following two aliases:

—Gazprom Kapital; *and*

—Obshchestvo S Ogranichennoi Otvetstvennostyu ‘Gazprom Kapital’.

Sosenskoe Pos, Pos. Gazoprovod, D. 101 Korp. 9, Moscow 142770, Russia;

(26) *Gazprom Komplektatsiya, OOO,* a.k.a., the following two aliases:

—Gazprom Komplektatsiya; *and*
—Obshchestvo S Ogranichennoi Otvetstvennostyu ‘Gazprom Komplektatsiya’.

8 Korp. 1 ul.Stroitelei, Moscow 119991, Russia;

(27) *Gazprom Mezhregiongaz, OOO,* a.k.a., the following two aliases:

—Gazprom Mezhregiongaz; *and*
—Obshchestvo S Ogranichennoi Otvetstvennostyu ‘Gazprom Mezhregiongaz’.

d. Dom 24 korp. Liter A nab.Admirala Lazareva, St. Petersburg 197110, Russia;

(28) *Gazprom Pererabotka, OOO,* a.k.a., the following two aliases:

—Gazprom Pererabotka; *and*
—Obshchestvo S Ogranichennoi Otvetstvennostyu ‘Gazprom Pererabotka’.

d.16 ul.Ostrovskogo, Surgut, Khanty-Mansiski Avtonomny okrug—Yugra a.o. 628417, Russia;

(29) *Gazprom Personal, OOO,* a.k.a., the following two aliases:

—Gazprom Personal; *and*
—Obshchestvo S Ogranichennoi Otvetstvennostyu ‘Gazprom Personal’.

16, Gsp-7 ul.Nametkina, Moscow 117997, Russia;

(30) *Gazprom Promgaz, AO* (f.k.a., Otkrytoe Aktsionernoe Obshchestvo Gazprom Promgaz), a.k.a., the following two aliases:

—Aktsionernoe Obshchestvo ‘Gazprom Promgaz’ *and*
—Gazprom Promgaz.

d. 6 ul.Nametkina, Moscow 117420, Russia;

(31) *Gazprom Russkaya, OOO* (f.k.a., Obshchestvo S Ogranichennoi Otvetstvennostyu Kovyktneftegaz), a.k.a., the following two aliases:

—Gazprom Russkaya; *and*
—Obshchestvo S Ogranichennoi Otvetstvennostyu ‘Gazprom Russkaya’.

3 korp.2 ul.Varshavskaya, St. Petersburg 196128, Russia;

(32) *Gazprom Sotsinvest, OOO* (f.k.a., Gazprominvestarena OOO), a.k.a., the following two aliases:

—Gazprom Sotsinvest; *and*
—Obshchestvo S Ogranichennoi Otvetstvennostyu ‘Gazprom Sotsinvest’.

d. 20 litera A nab.Aptekarskaya, St. Petersburg 197022, Russia;

(33) *Gazprom Svyaz, OOO,* a.k.a., the following two aliases:

—Gazprom Svyaz; *and*
—Obshchestvo S Ogranichennoi Otvetstvennostyu ‘Gazprom Svyaz’.

d.16 ul.Nametkina, Moscow 117997, Russia;

(34) *Gazprom Telekom, OOO* (f.k.a., Zakrytoe Aktsionernoe Obshchestvo Gaztelekom), a.k.a., the following two aliases:

—Gazprom Telecom; *and*
—Obshchestvo S Ogranichennoi Otvetstvennostyu ‘Gazprom Telekom’.

d. 62 str. 2 shosse Starokaluzhskoe, Moscow 117630, Russia;

(35) *Gazprom Transgaz Kazan, OOO,* a.k.a., the following two aliases:

—Gazprom Transgaz Kazan; *and*
—Obshchestvo S Ogranichennoi Otvetstvennostyu ‘Gazprom Transgaz Kazan’.

d.41 ul.Adelya Kutuya, Kazan, Tatarstan resp 420073, Russia;

(36) *Gazprom Transgaz Krasnodar, OOO,* a.k.a., the following two aliases:

—Gazprom Transgaz Krasnodar; *and*
—Obshchestvo S Ogranichennoi Otvetstvennostyu ‘Gazprom Transgaz Krasnodar’.

d.36 ul.Im Dzerzhinskogo, Krasnodar, Krasnodarski krai 350051, Russia;

(37) *Gazprom Transgaz Makhachkala, OOO* (f.k.a., Obshchestvo S Ogranichennoi Otvetstvennostyu Gazprom Transgaz Makhachkala), a.k.a., the following two aliases:

—Gazprom Transgaz Makhachkala; *and*
—Obshchestvo S Ogranichennoi Otvetstvennostyu ‘Gazprom Transgaz Makhachkala’.

ul.O.Bulacha, Makhachkala, Dagestan resp. 367030, Russia;

(38) *Gazprom Transgaz Nizhni Novgorod, OOO,* a.k.a., the following two aliases:

—Gazprom Transgaz Nizhny Novgorod; *and*
—Obshchestvo S Ogranichennoi Otvetstvennostyu ‘Gazprom Transgaz Nizhni Novgorod’.

d.11 ul.Zvezdinka, Nizhni Novgorod, Nizhegorodskaya obl. 603950, Russia;

(39) *Gazprom Transgaz Samara, OOO,* a.k.a., the following two aliases:

—Gazprom Transgaz Samara; *and*
—Obshchestvo S Ogranichennoi Otvetstvennostyu ‘Gazprom Transgaz Samara’.

d. 106 A str. 1 ul.Novo-Sadovaya, Samara, Samarskaya obl. 443068, Russia;

(40) *Gazprom Transgaz Sankt-Peterburg, OOO,* a.k.a., the following two aliases:

—Gazprom Transgaz Saint Petersburg; *and*
—Obshchestvo S Ogranichennoi Otvetstvennostyu ‘Gazprom Transgaz Sankt-Peterburg’.

3 korp.2 ul.Varshavskaya, St. Petersburg 196128, Russia;

(41) *Gazprom Transgaz Saratov, OOO,* a.k.a., the following two aliases:

—Gazprom Transgaz Saratov; *and*
—Obshchestvo S Ogranichennoi Otvetstvennostyu ‘Gazprom Transgaz Saratov’.

d.118 A prospekt Im 50 Let Oktyabrya, Saratov, Saratovskaya obl. 410052, Russia;

(42) *Gazprom Transgaz Stavropol, OOO,* a.k.a., the following two aliases:

—Gazprom Transgaz Stavropol; *and*
—Obshchestvo S Ogranichennoi Otvetstvennostyu ‘Gazprom Transgaz Stavropol’.

d.6 prospekt Oktyabrskoi Revolyutsii, Stavropol, Stavropolski krai 355000, Russia;

(43) *Gazprom Transgaz Surgut, OOO,* a.k.a., the following two aliases:

—Gazprom Transgaz Surgut; *and*
—Obshchestvo S Ogranichennoi Otvetstvennostyu ‘Gazprom Transgaz Surgut’.

d.1 ul.Universitetskaya, Surgut, Khanty-Mansiski Avtonomny okrug—Yugra a.o. 628406, Russia;

(44) *Gazprom Transgaz Tomsk, OOO,* a.k.a., the following two aliases:

—Gazprom Transgaz Tomsk; *and*
—Obshchestvo S Ogranichennoi Otvetstvennostyu ‘Gazprom Transgaz Tomsk’.

d.9 prospekt Frunze, Tomsk, Tomskaya obl. 634029, Russia;

(45) *Gazprom Transgaz Ufa, OOO,* a.k.a., the following two aliases:

—Gazprom Transgaz Ufa (f.k.a., Obshchestvo S Ogranichennoi Otvetstvennostyu Bashtransgaz Otkrytogo Aktsionernogo Obshchestva Gazprom); *and*
—Obshchestvo S Ogranichennoi Otvetstvennostyu ‘Gazprom Transgaz UFA’.

59 ul.Rikharda Zorge, Ufa, Bashkortostan resp. 450054, Russia;

(46) *Gazprom Transgaz Ukhta, OOO,* a.k.a., the following two aliases:

—Gazprom Transgaz Ukhta; *and*
—Obshchestvo S Ogranichennoi Otvetstvennostyu ‘Gazprom Transgaz Ukhta’.

d.39/2 prospekt Lenina, Ukhta, Komi resp 169312, Russia;

(47) *Gazprom Transgaz Volgograd, OOO,* a.k.a., the following two aliases:

—Gazprom Transgaz Volgograd; *and*
—Obshchestvo S Ogranichennoi Otvetstvennostyu ‘Gazprom Transgaz Volgograd’.

58 ul.Raboche-Krestyanskaya, Volgograd, Volgogradskaya obl. 400074, Russia;

(48) *Gazprom Transgaz Yugorsk, OOO* (f.k.a., Obshchestvo S Ogranichennoi Otvetstvennostyu Tyumentransgaz), a.k.a., the following two aliases:

—Gazprom Transgaz Yugorsk; *and*
—Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Transgaz Yugorsk'.

d.15 ul.Mira, Yugorsk, Khanty-Mansiski Avtonomny okrug, Yugra a.o. 628260, Russia;

(49) *Gazprom Tsentrremont, OOO,* a.k.a., the following two aliases:

—Gazprom Tsentrremont; *and*
—Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Tsentrremont'.

d.1 ul.Moskovskaya, Shchelkovo, Moskovskaya obl 141112, Russia;

(50) *Gazprom Vniigaz, OOO,* a.k.a., the following two aliases:

—Gazprom Vniigaz; *and*
—Obshchestvo S Ogranichennoi Otvetstvennostyu 'Nauchno-Issledovatelski Institut Prirodnykh Gazov I Gazovykh Tekhnologi—Gazprom Vniigaz'.

P Razvilka, Leninski Raion, Moskovskaya obl. 142717, Russia;

(51) *Joint Stock Company Angstrem,* Dom 4, Stroennie 3, Proezd 4806, Zelenograd, Russia 124460;

(52) *Joint Stock Company Angstrem-T,* Dom 7, Georgievskiy Prospekt, Zelenograd, Russia 124460;

(53) *Joint Stock Company Foreign Economic Association (FEA) Radioexport,* 8 Ukrainksi Boulevard, Moscow, Russia 121059;

(54) *Joint Stock Company Mikron,* a.k.a., the following one alias:

—NIIME and Mikron.

1st Zapadny Proezd 12/1, Zelenograd, Russia 124460;

(55) *Joint Stock Company Perm Scientific Industrial Instrument-Making Company (PNPPK),* 25th of October Street, Number 106, Perm, Russia 614990;

(56) *Joint Stock Company Research and Production Company Micran,* 51d Kirova Street, Tomsk, Russia 634041; *and* 2/5/4 Building 3 Slavyanskaya Square, Moscow, Russia 109074;

(57) *Kamchatgazprom, OAO,* a.k.a., the following two aliases:

—Kamchatgazprom; *and*
—Otkrytoe Aktsionernoe Obshchestvo 'Kamchatgazprom'.

d.19 ul.Pogranichnaya, Petropavlovsk-Kamchatski, Kamchatski krai 683032, Russia;

(58) *Krasnoyarskgazprom, PAO,* a.k.a., the following two aliases:

—Krasnoyarskgazprom; *and*
—Publichnoe Aktsionernoe Obshchestvo 'Krasnoyarskgazprom'.

d.1 pl.Akademika Kurchatova, Moscow 123182, Russia;

(59) *Lazurnaya, OOO,* a.k.a., the following two aliases:

—Obshchestvo S Ogranichennoi Otvetstvennostyu 'Lazurnaya'; *and*
—"Lazurnaya".

d.103 prospekt Kurortny, Sochi, Krasnodarski krai 354024, Russia;

(60) *LLC Koksokhimtrans,* a.k.a., the following one alias:

—Koksokhimtrans Ltd.

Rakhmanovskiy lane, 4, bld.1, Morskoy House, Moscow 127994, Russia;

(61) *Niigazekonomika, OOO,* a.k.a., the following two aliases:

—Niigazeconomika; *and*
—Obshchestvo S Ogranichennoi Otvetstvennostyu 'Nauchnoissledovatelski Institut Ekonomiki I Organizatsii Upravleniya V Gazovoipromyshlennosti'.

d. 20 korp. 8 ul. Staraya Basmannaya, Moscow 107066, Russia;

(62) *NPC Granat,* 22 Polytechnicheskaya Street, Saint Petersburg, Russia 194021;

(63) *OAO Ship Repair Center 'Zvezdochka',* a.k.a., the following four aliases:

—'Zvezdochka' Shipyard;
—AO Ship Repair Center 'Zvezdochka';
—Joint Stock Company Ship Repair Center 'Zvezdochka'; *and*
—Ship Repair Center Zvezdochka.

12, proyezd Mashinostroiteley, Severodvinsk, Arkhangelskaya Oblast 164509, Russia (See alternate address in Crimea region of Ukraine).

(64) *OJSC Sovfracht,* a.k.a., the following three aliases:

—PJSC 'Sovfracht';
—Sovfracht JSC; *and*
—Sovfrakht.

Rakhmanovskiy lane, 4, bld.1, Morskoy House, Moscow 127994, Russia;

(65) *OOO 'DSK',* a.k.a., the following one alias:

—OOO 'Dorozhnaya Stroitelnaya Kompania'.

Stroitelnaya Street, 34, village of Kesova Gora, Tver Oblast 171470, Russia;

(66) *OOO 'STG–EKO',* a.k.a., the following one alias:

—'STG–EKO' LLC.

Street Zastavskaya Building 22, Part A, Saint Petersburg 196084, Russia;

(67) *PJSC Mostotrest,* a.k.a., the following four aliases:

—Mostotrest;
—Mostotrest, PAO;
—Open Joint Stock Company 'Mostotrest'; *and*
—Public Joint Stock Company Mostotrest.

6 Barklaya str., bld. 5, Moscow 121087, Russia; *and* d. 6 str. 5, ul. Barklaya, Moscow 121087, Russia;

(68) *Salvation Committee of Ukraine,* a.k.a., the following three aliases:

—Committee for the Rescue of Ukraine;
—Savior of Ukraine Committee; *and*
—Ukraine Salvation Committee.

Russia;

(69) *SGM Most OOO* (f.k.a., Obshchestvo S Ogranichennoi Otvetstvennostyu SGM Most), a.k.a., the following three aliases:

—Obshchestvo S Ogranichennoi Otvetstvennostyu 'SGM-Most';
—SGM-Bridge; *and*
—SGM-Most, LLC.

d. 10 korp. 3 ul. Neverovskogo, Moscow 121170, Russia;

(70) *SMT–K,* a.k.a., the following six aliases:

—KRYM SMT OOO LLC;
—LLC CMT Crimea;
—OOO 'CMT–K';
—OOO 'SMT–K';
—SMT-Crimea; *and*
—Sovmortrans-Crimea.

Anapskoye Highway 1, Temryuk, Russia (See alternate address under Crimea region of Ukraine);

(71) *Sovfracht Managing Company, LLC,* a.k.a., the following four aliases:

—LLC Sovfracht Management Company;
—Management Company Sovfrakht Ltd.;
—Sovfracht Management Company; *and*
—Sovfracht Management Company, LLC.

Dobroslobodskaya, 3 BC Basmanov, Moscow 105066, Russia.

(72) *Sovfracht-Sovmortrans Group,* a.k.a., the following two aliases:

—Sovfracht-Sovmortrans; *and*
—Sovfrakht-Sovmortrans.

Rakhmanovskiy lane, 4, bld.1, Morskoy House, Moscow 127994, Russia; *and* Dobroslobodskaya, 3 BC Basmanov, Moscow 105066, Russia.

(73) *Technopole Company,* 5–183 Entuziastov Street, Dubna, Moscow Region, Russia 141980; *and* 12 Aviamotornaya Street, Moscow, Russia 111024;

(74) *Vostokgazprom, OAO,* a.k.a., the following two aliases:

—Otkrytoe Aktsionernoe Obshchestvo 'Vostokgazprom'; *and*
—Vostokgazprom.

d.73 ul.Bolshaya Podgornaya, Tomsk, Tomskaya obl. 634009, Russia; *and*

(75) *Yamalgazinvest, ZAO,* a.k.a., the following two aliases:

—Yamalgazinvest; *and*
—Zakrytoe Aktsionernoe Obshchestvo 'Yamalgazinvest'.

d. 41 korp. 1 prospekt Vernadskogo, Moscow 117415, Russia.

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 4, 2016, 81 FR 52587 (August 8, 2016), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222, as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and carries a burden estimate of 43.8 minutes for a manual or electronic submission.

Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment and a delay in effective date are inapplicable because this regulation involves a military or foreign affairs function of the United States. (*See* 5 U.S.C. 553(a)(1)). BIS implements this rule to protect U.S. national security or foreign policy interests by preventing items from being exported, reexported, or transferred (in country) to the entities being added to the Entity List. If this rule were delayed to allow for notice and comment and a delay in effective date, then the entities being added to the Entity List by this action would continue to be able to receive items without a license and to conduct activities contrary to the national security or foreign policy interests of the United States. In addition, publishing a proposed rule would give these parties notice of the U.S. Government's intention to place them on the Entity List and would create an incentive for these persons to either accelerate receiving items subject to the EAR to conduct activities that are contrary to the national security or foreign policy interests of the United States, and/or to take steps to set up additional aliases, change addresses, and other measures to try to limit the impact of the listing on the Entity List once a final rule was published. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

For the reasons stated in the preamble, the Bureau of Industry and Security amends part 744 of the Export Administration Regulations (15 CFR parts 730–774) as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 18, 2015, 80 FR 57281 (September 22, 2015); Notice of November 12, 2015, 80 FR 70667 (November 13, 2015); Notice of January 20, 2016, 81 FR 3937 (January 22, 2016); Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

■ 2. Supplement No. 4 to part 744 is amended:

■ a. By adding under the destination of Crimea region of Ukraine, in alphabetical order, seven entities;

■ b. By adding under the destination of Hong Kong, in alphabetical order, two Hong Kong entities;

■ c. By adding under the destination of India, in alphabetical order, two Indian entities; and

■ d. By adding under the destination of Russia, in alphabetical order, seventy-five Russian entities.

The additions read as follows:

Supplement No. 4 to Part 744—Entity List

* * * * *

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	* *	* *	*	*
CRIMEA REGION OF UKRAINE.	* *	*	* *	*
	FAU 'Glavgosekspertiza Rossii', a.k.a., the following three aliases: —Federal Autonomous Institution 'Main Directorate of State Examination'; —General Board of State Expert Review; *and* —Glavgosekspertiza. 13 Demidova Street, Sevastopol, Crimea, Ukraine; *and* 10 Vokzalnaya Street, Sevastopol, Crimea, Ukraine (See alternate address under Russia).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	Federal SUE Shipyard 'Morye', a.k.a., the following four aliases: —Federal State Unitary Enterprise SZ Morye; —FSUE SZ 'Morye'; —Morye Shipyard; *and* —More Shipyard. 1 Desantnikov Street, Feodosia, Crimea 98176, Ukraine.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	* *	*	* *	*
	OAO 'Uranis-Radiosistemy', a.k.a., the following three aliases: —OJSC 'Uranis Radio Systems'; —OJSC Uranis-Radiosistemy; *and* —Uranis-Radiosistemy OAO. 33 G, Vakulenchuk Street, Sevastopol, Crimea 99053, Ukraine.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	OAO Ship Repair Center 'Zvezdochka', a.k.a., the following four aliases: —'Zvezdochka' Shipyard; —AO Ship Repair Center 'Zvezdochka'; —Joint Stock Company Ship Repair Center 'Zvezdochka;' *and* —Ship Repair Center Zvezdochka. 13 Geroyev Sevastopolya Street, Sevastopol, Crimea 99001, Ukraine (See alternate address in Russia).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	OOO Shipyard 'Zaliv' (f.k.a., AO Shipyard 'Zaliv'; JSC Shipyard 'Zaliv;' JSC Zaliv Shipyard; *and* OJSC ZALIV SHIPYARD), a.k.a., the following two aliases: —LLC Shipyard 'Zaliv'; *and.* —Zaliv Shipyard LLC. 4 Tankistov Street, Kerch, Crimea 98310, Ukraine.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	* *	*	* *	*
	SMT–K, a.k.a., the following six aliases: —Krym SMT OOO LLC; —LLC CMT Crimea; —OOO 'CMT–K'; —OOO 'SMT–K';. —SMT-Crimea; *and.* —Sovmortrans-Crimea. ul. Zoi Zhiltsovoy, d. 15, office 51, Simferopol, Crimea, Ukraine (See Alternate address under Russia).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	* *	*	* *	*

Country	Entity	License requirement	License review policy	**Federal Register** citation
	Sue RC 'Feodosia Optical Plant', a.k.a., the following two aliases: —Feodosia State Optical Plant; *and* —State Optical Plant—Feodosia. Feodosia State Optical Plant, 11 Moskovskaya Street, Feodosia, Crimea 98100, Ukraine.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
*	*	*	*	*
HONG KONG	*	*	*	*
	Giovan Ltd., Suite 1505–6, Albion Plaza, 2–6 Granville Road, TsimShatSui, Kowloon, Hong Kong (See alternate address under India).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	*	*	*	*
	Technopole Ltd., Suite 1505–6, Albion Plaza, 2–6 Granville Road, TsimShatSui, Kowloon, Hong Kong (See alternate address under India).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	*	*	*	*
INDIA	*	*	*	*
	Giovan Ltd., C–16A, New Multan Nagar, Surya Enclave, New Rohtak Road 099 Paschim Vihar, New Delhi, India 110056 (See alternate address under Hong Kong).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	Technopole Ltd., D–79, New Multan Nagar, Surya Enclave, New Rohtak Road 099 Paschim Vihar, New Delhi, India 110056 (See alternate address under Hong Kong).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
*	*	*	*	*
RUSSIA	*	*	*	*
	Achim Development, OOO, a.k.a., the following two aliases: —Achim Development; *and* —Obshchestvo S Ogranichennoi Otvetstvennostyu 'Achim Development'. d.7 ul.Promyshlennaya, Novy Urengoi, Yamalo-Nenetski a.o. 629306, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	*	*	*	*
	Angstrem-M, Dom 4, Stroennie 3, Proezd 4806, Zelenograd, Russia 124460.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	*	*	*	*
	AO 'Institute Giprostroymost—Saint-Petersburg' (f.k.a., Institut Giprostroimost-Sankt-Peterburg, ZAO; *and* ZAO 'Institute Giprostroymost Saint-Petersburg'), a.k.a., the following three aliases: —AO 'Institute Giprostroymost—Sankt-Peterburg'; —JSC 'Institute Giprostroymost—Saint-Petersburg'; *and* —JSC 'Institute Giprostroymost—Sankt-Peterburg'. 7 Yablochkova Street, St. Petersburg 197198, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.

Country	Entity	License requirement	License review policy	**Federal Register** citation
	* * * * * *			
	CJSC Sovmortrans, a.k.a., the following one alias: —Sovmortrans CJSC. Rakhmanovskiy lane, 4, bld.1, Morskoy House, Moscow 127994, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	* * * * * *			
	Daltransgaz, OAO, a.k.a., the following two aliases: —Daltransgaz; *and* —Otkrytoe Aktsionernoe Obshchestvo 'Daltransgaz'. d. 1 ul.Solnechnaya S. Ilinka, Khabarovski Raion Khabarovski krai 680509, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	* * * * * *			
	Druzhba, AO, a.k.a., the following two aliases: —Aktsionernoe Obshchestvo 'Druzhba'; *and* —Druzhba. Rogozinino, Moscow 143397, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	* * * * * *			
	FAU 'Glavgosekspertiza Rossii', a.k.a., the following three aliases: —Federal Autonomous Institution 'Main Directorate of State Examination'; —General Board of State Expert Review; *and* —Glavgosekspertiza. Furkasovskiy Lane, building 6, Moscow 101000, Russia (See alternate address under Crimea region of Ukraine)	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	* * * * * *			
	FKU Uprdor 'Taman', a.k.a., the following one alias: —Federal State Institution Management of Federal Roads 'Taman'. 3 Revolution Avenue, Anapa, Krasnodar 353440, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	* * * * * *			
	Gaz-Oil, OOO (f.k.a., Zakrytoe Aktsionernoe Obshchestvo Gaz Oil), a.k.a., the following two aliases: —Gaz-Oil; *and* —Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gaz-Oil'. d.10 B ul.Nametkina, Moscow 117420, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	Gazmash, AO (f.k.a., Dochernee Otkrytoe Aktsionernoe Obshchestvo Gazmash Otkrytogo Aktsionernogo Obshchestva Gazprom), a.k.a., the following two aliases: —Aktsionernoe Obshchestvo 'Gazmash'; *and* —Gazmash. d. 54 korp. 1 litera A pomeshch prospekt Primorski, St. Petersburg 197374, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.

Country	Entity	License requirement	License review policy	**Federal Register** citation
	Gazprom Dobycha Irkutsk, OOO (f.k.a., Otkrytoe Aktsionernoe Obshchestvo Irkutskgazprom), a.k.a., the following two aliases: —Gazprom Dobycha Irkutsk; *and* —Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Dobycha Irkutsk'. d.14 ul.Nizhnyaya Naberezhnaya, Irkutsk, Irkutskaya obl 664011, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	Gazprom Dobycha Krasnodar, OOO, a.k.a., the following two aliases: —Gazprom Dobycha Krasnodar; *and* —Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Dobycha Krasnodar'. d.53 ul.Shosse Neftyanikov, Krasnodar, Krasnodarski krai 350051, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	Gazprom Dobycha Kuznetsk, OOO, a.k.a., the following two aliases: —Gazprom Dobycha Kuznetsk; *and* —Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Dobycha Kuznetsk'. d.4 prospekt Oktyabrski, Kemerovo, Kemerovskaya obl 650066, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	Gazprom Dobycha Nadym, OOO, a.k.a., the following two aliases: —Gazprom Dobycha Nadym; *and* —Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Dobycha Nadym'. d.1 ul.Zvereva, Nadym, Yamalo-Nenetski a.o. 629730, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	Gazprom Dobycha Noyabrsk, OOO, a.k.a., the following two aliases: —Gazprom Dobycha Noyabrsk; *and* —Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Dobycha Noyabrsk'. d.20 ul. Respubliki, Noyabrsk, Yamalo-Nenetski a.o. 629802, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	Gazprom Dobycha Urengoi, OOO, a.k.a., the following two aliases: —Gazprom Dobycha Urengoy; *and* —Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Dobycha Urengoi'. d.8 ul.Zheleznodorozhnaya, Novy Urengoi, Yamalo-Nenetski a.o. 629307, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016
	Gazprom Dobycha Yamburg,OOO, a.k.a., the following two aliases: —Gazprom Dobycha Yamburg; *and* —Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Dobycha Yamburg'. d.9 ul. Geologorazvedchikov, Novy Urengoi, Yamalo-Nenetski a.o 629306, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	Gazprom Energo, OOO, a.k.a., the following two aliases: —Gazprom Energo; *and* —Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Energo'. 8 Korp. 1 ul.Stroitelei, Moscow 117939, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	Gazprom Flot, OOO (f.k.a., Obshchestvo S Ogranichennoi Otvetstvennostyu Gazflot), a.k.a., the following two aliases: —Gazprom Flot; *and* —Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Flot'. d. 12 A ul.Nametkina, Moscow 117420, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.

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	Gazprom Gaznadzor, OOO, a.k.a., the following two aliases: —Gazprom Gaznadzor; *and* —Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Gaznadzor'. 41 str. 1 prospekt Vernadskogo, Moscow 119415, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	Gazprom Gazobezopasnost, OOO, a.k.a., the following two aliases: —Gazprom Gazobezopasnost; *and* —Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Gazobezopasnost'. d. 8 korp. 1 ul.Stroitelei, Moscow 119311, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	Gazprom Geologorazvedka, OOO (f.k.a., Obshchestvo S Ogranichennoi Otvetstvennostyu Gazprom Dobycha Krasnoyarsk), a.k.a., the following two aliases: —Gazprom Geologorazvedka; *and* —Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Geologorazvedka'. d.70 ul.Gertsena, Tyumen, Tyumenskaya obl. 625000, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	Gazprom Inform, OOO (f.k.a., Zakrytoe Aktsionernoe Obshchestvo Informgazinvest), a.k.a., the following two aliases: —Gazprom Inform; *and* —Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Inform'. d. 13 str. 3 ul.Bolshaya Cheremushkinskaya, Moscow 117447, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	Gazprom Invest, OOO, a.k.a., the following two aliases: —Gazprom Invest; *and* —Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Invest'. d. 6 litera D ul.Startovaya, St. Petersburg 196210, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	Gazprom Kapital, OOO (f.k.a., Obshchestvo S Ogranichennoi Otvetstvennostyu Kap Infin), a.k.a., the following two aliases: —Gazprom Kapital; *and* —Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Kapital'. Sosenskoe Pos, Pos. Gazoprovod, D. 101 Korp. 9, Moscow 142770, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	Gazprom Komplektatsiya, OOO, a.k.a., the following two aliases: —Gazprom Komplektatsiya; *and* —Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Komplektatsiya'. 8 Korp. 1 ul.Stroitelei, Moscow 119991, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	Gazprom Mezhregiongaz, OOO, a.k.a., the following two aliases: —Gazprom Mezhregiongaz; *and* —Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Mezhregiongaz'. d. Dom 24 korp. Liter A nab.Admirala Lazareva, St. Petersburg 197110, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.

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	Gazprom Pererabotka, OOO, a.k.a., the following two aliases: —Gazprom Pererabotka; *and* —Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Pererabotka'. d.16 ul.Ostrovskogo, Surgut, Khanty-Mansiski Avtonomny okrug—Yugra a.o. 628417, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	Gazprom Personal, OOO, a.k.a., the following two aliases: —Gazprom Personal; *and* —Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Personal'. 16, Gsp-7 ul.Nametkina, Moscow 117997, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	Gazprom Promgaz, AO (f.k.a., Otkrytoe Aktsionernoe Obshchestvo Gazprom Promgaz), a.k.a., the following two aliases: —Aktsionernoe Obshchestvo 'Gazprom Promgaz' *and* —Gazprom Promgaz. d. 6 ul.Nametkina, Moscow 117420, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	Gazprom Russkaya, OOO (f.k.a., Obshchestvo S Ogranichennoi Otvetstvennostyu Kovyktneftegaz), a.k.a., the following two aliases: —Gazprom Russkaya; *and* —Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Russkaya'. 3 korp.2 ul.Varshavskaya, St. Petersburg 196128, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	Gazprom Sotsinvest, OOO (f.k.a., Gazprominvestarena OOO), a.k.a., the following two aliases: —Gazprom Sotsinvest; *and* —Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Sotsinvest'. d. 20 litera A nab.Aptekarskaya, St. Petersburg 197022, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	Gazprom Svyaz, OOO, a.k.a., the following two aliases: —Gazprom Svyaz; *and* Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Svyaz'. d.16 ul.Nametkina, Moscow 117997, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	Gazprom Telekom, OOO (f.k.a., Zakrytoe Aktsionernoe Obshchestvo Gaztelekom), a.k.a., the following two aliases: —Gazprom Telecom; *and* —Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Telekom'. d. 62 str. 2 shosse Starokaluzhskoe, Moscow 117630, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	Gazprom Transgaz Kazan, OOO, a.k.a., the following two aliases: —Gazprom Transgaz Kazan; *and* —Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Transgaz Kazan'. d.41 ul.Adelya Kutuya, Kazan, Tatarstan resp 420073, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	Gazprom Transgaz Krasnodar, OOO, a.k.a., the following two aliases: —Gazprom Transgaz Krasnodar; *and* —Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Transgaz Krasnodar'. d.36 ul.Im Dzerzhinskogo, Krasnodar, Krasnodarski krai 350051, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.

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	Gazprom Transgaz Makhachkala, OOO (f.k.a., Obshchestvo S Ogranichennoi Otvetstvennostyu Gazprom Transgaz Makhachkala), a.k.a., the following two aliases: —Gazprom Transgaz Makhachkala; *and* —Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Transgaz Makhachkala'.ul.O.Bulacha, Makhachkala, Dagestan resp. 367030, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	—Gazprom Transgaz Nizhny Novgorod; *and* —Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Transgaz Nizhni Novgorod'. d.11 ul.Zvezdinka, Nizhni Novgorod, Nizhegorodskaya obl. 603950, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	Gazprom Transgaz Nizhni Novgorod, OOO, a.k.a., the following two aliases:			
	Gazprom Transgaz Samara, OOO, a.k.a., the following two aliases: —Gazprom Transgaz Samara; *and* —Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Transgaz Samara'. d. 106 A str. 1 ul.Novo-Sadovaya, Samara, Samarskaya obl. 443068, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	Gazprom Transgaz Sankt-Peterburg, OOO, a.k.a., the following two aliases: —Gazprom Transgaz Saint Petersburg; *and* —Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Transgaz Sankt-Peterburg'. 3 korp.2 ul.Varshavskaya, St. Petersburg 196128, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	Gazprom Transgaz Saratov, OOO, a.k.a., the following two aliases: —Gazprom Transgaz Saratov; *and* —Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Transgaz Saratov'. d.118 A prospekt Im 50 Let Oktyabrya, Saratov, Saratovskaya obl. 410052, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	Gazprom Transgaz Stavropol, OOO, a.k.a., the following two aliases: —Gazprom Transgaz Stavropol; *and* —Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Transgaz Stavropol'. d.6 prospekt Oktyabrskoi Revolyutsii, Stavropol, Stavropolski krai 355000, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	Gazprom Transgaz Surgut, OOO, a.k.a., the following two aliases: —Gazprom Transgaz Surgut; *and* —Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Transgaz Surgut'. d.1 ul.Universitetskaya, Surgut, Khanty-Mansiski Avtonomny okrug—Yugra a.o. 628406, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	Gazprom Transgaz Tomsk, OOO, a.k.a., the following two aliases: —Gazprom Transgaz Tomsk; *and* —Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Transgaz Tomsk'. d.9 prospekt Frunze, Tomsk, Tomskaya obl. 634029, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.

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	Gazprom Transgaz Ufa, OOO (f.k.a., Obshchestvo S Ogranichennoi Otvetstvennostyu Bashtransgaz Otkrytogo Aktsionernogo Obshchestva Gazprom), a.k.a., the following two aliases: —Gazprom Transgaz Ufa; *and* —Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Transgaz Ufa'. 59 ul.Rikharda Zorge, Ufa, Bashkortostan resp. 450054, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	Gazprom Transgaz Ukhta, OOO, a.k.a., the following two aliases: —Gazprom Transgaz Ukhta; *and* —Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Transgaz Ukhta'. d.39/2 prospekt Lenina, Ukhta, Komi resp 169312, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	Gazprom Transgaz Volgograd, OOO, a.k.a., the following two aliases: —Gazprom Transgaz Volgograd; *and* —Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Transgaz Volgograd'. 58 ul.Raboche-Krestyanskaya, Volgograd, Volgogradskaya obl. 400074, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	Gazprom Transgaz Yugorsk, OOO (f.k.a., Obshchestvo S Ogranichennoi Otvetstvennostyu Tyumentransgaz), a.k.a., the following two aliases: —Gazprom Transgaz Yugorsk; *and* —Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Transgaz Yugorsk'. d.15 ul.Mira, Yugorsk, Khanty-Mansiski Avtonomny okrug, Yugra a.o. 628260, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	Gazprom Tsentrremont, OOO, a.k.a., the following two aliases: —Gazprom Tsentrremont; *and* —Obshchestvo S Ogranichennoi Otvetstvennostyu 'Gazprom Tsentrremont'. d.1 ul.Moskovskaya, Shchelkovo, Moskovskaya obl 141112, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	Gazprom Vniigaz, OOO, a.k.a., the following two aliases: —Gazprom Vniigaz; *and* —Obshchestvo S Ogranichennoi Otvetstvennostyu 'Nauchno-Issledovatelski Institut Prirodnykh Gazov I Gazovykh Tekhnologi—Gazprom Vniigaz'. P Razvilka, Leninski Raion, Moskovskaya obl. 142717, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
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	Joint Stock Company Angstrem, Angstrem-M, Dom 4, Stroennie 3, Proezd 4806, Zelenograd, Russia 124460.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	Joint Stock Company Angstrem-T, Dom 7, Georgievskiy Prospekt, Zelenograd, Russia 124460.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	* *	*	* *	*
	Joint Stock Company Foreign Economic Association (FEA) Radioexport, 8 Ukrainksi Boulevard, Moscow, Russia, 121059.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
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	Joint Stock Company Mikron, a.k.a., the following one alias: —NIIME and Mikron. 1st Zapadny Proezd 12/1, Zelenograd, Russia 124460.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	* *	*	* *	*
	Joint Stock Company Perm Scientific Industrial Instrument-Making Company (PNPPK), 25th of October Street, Number 106, Perm, Russia 614990.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	Joint Stock Company Research and Production Company Micran, 51d Kirova Street, Tomsk, Russia 634041; *and* 2/5/4 Building 3 Slavyanskaya Square, Moscow, Russia 109074.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
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	Kamchatgazprom, OAO, a.k.a., the following two aliases: —Kamchatgazprom; *and* —Otkrytoe Aktsionernoe Obshchestvo 'Kamchatgazprom'. d.19 ul.Pogranichnaya, Petropavlovsk-Kamchatski, Kamchatski krai 683032, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	* *	*	* *	*
	Krasnoyarskgazprom, PAO, a.k.a., the following two aliases: —Krasnoyarskgazprom; *and* —Publichnoe Aktsionernoe Obshchestvo 'Krasnoyarskgazprom. d.1 pl.Akademika Kurchatova, Moscow 123182, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	Lazurnaya, OOO, a.k.a., the following two aliases: —Obshchestvo S Ogranichennoi Otvetstvennostyu 'Lazurnaya'; *and* —"Lazurnaya". d.103 prospekt Kurortny, Sochi, Krasnodarski krai 354024, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	LLC Koksokhimtrans, a.k.a., the following one alias: —Koksokhimtrans Ltd. Rakhmanovskiy lane, 4, bld.1, Morskoy House, Moscow 127994, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
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	Niigazekonomika, OOO, a.k.a., the following two aliases: —Niigazeconomika; *and* —Obshchestvo S Ogranichennoi Otvetstvennostyu 'Nauchnoissledovatelski Institut Ekonomiki I Organizatsii Upravleniya V Gazovoipromyshlennosti'. d. 20 korp. 8 ul. Staraya Basmannaya, Moscow 107066, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
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	NPC Granat, 22 Polytechnicheskaya Street, Saint Petersburg, Russia 194021.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	OAO Ship Repair Center 'Zvezdochka', a.k.a., the following four aliases: —'Zvezdochka' Shipyard; —AO Ship Repair Center 'Zvezdochka'; —Joint Stock Company Ship Repair Center 'Zvezdochka;' *and*	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.

Country	Entity	License requirement	License review policy	**Federal Register** citation
	—Ship Repair Center Zvezdochka. 12, proyezd Mashinostroiteley, Severodvinsk, Arkhangelskaya Oblast 164509, Russia (See alternate address in Crimea region of Ukraine).			
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	OJSC Sovfracht, a.k.a., the following three aliases: —PJSC 'Sovfracht'; —Sovfracht JSC; *and* —Sovfrakht. Rakhmanovskiy lane, 4, bld.1, Morskoy House, Moscow 127994, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
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	OOO 'DSK', a.k.a., the following one alias: —OOO 'Dorozhnaya Stroitelnaya Kompania'.' Stroitelnaya Street, 34, village of Kesova Gora, Tver Oblast 171470, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	OOO 'STG–EKO', a.k.a., the following one alias: —'STG–EKO' LLC. Street Zastavskaya Building 22, Part A, Saint Petersburg 196084, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	* * * * * * *			
	PJSC Mostotrest, a.k.a., the following four aliases: —Mostotrest; —Mostotrest, PAO; —Open Joint Stock Company 'Mostotrest'; *and* —Public Joint Stock Company Mostotrest. 6 Barklaya str., bld. 5, Moscow 121087, Russia; *and* d. 6 str. 5, ul. Barklaya, Moscow 121087, Russia..	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	* * * * * * *			
	Salvation Committee of Ukraine, a.k.a., the following three aliases: —Committee for the Rescue of Ukraine; —Savior of Ukraine Committee; *and* —Ukraine Salvation Committee. Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	* * * * * * *			
	SGM Most OOO (f.k.a., Obshchestvo S Ogranichennoi Otvetstvennostyu SGM Most), a.k.a., the following three aliases: —Obshchestvo S Ogranichennoi Otvetstvennostyu 'SGM-Most'; —SGM-Bridge; *and* —SGM-Most, LLC. d. 10 korp. 3 ul. Neverovskogo, Moscow 121170, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	SMT–K, a.k.a., the following six aliases: —KRYM SMT OOO LLC; —LLC CMT Crimea; —OOO 'CMT–K'; —OOO 'SMT–K'; —SMT-Crimea; *and* —Sovmortrans-Crimea. Anapskoye Highway 1, Temryuk, Russia (See alternate address under Crimea region of Ukraine).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	* * * * * * *			

Country	Entity	License requirement	License review policy	**Federal Register** citation
	Sovfracht Managing Company, LLC, a.k.a., the following four aliases: —LLC Sovfracht Management Company; —Management Company Sovfrakht Ltd.; —Sovfracht Management Company; *and* —Sovfracht Management Company, LLC. Dobroslobodskaya, 3 BC Basmanov, Moscow 105066, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	Sovfracht-Sovmortrans Group, a.k.a., the following two aliases: —Sovfracht-Sovmortrans; *and* —Sovfrakht-Sovmortrans. Rakhmanovskiy Lane, 4, bld.1, Morskoy House, Moscow 127994, Russia; *and* Dobroslobodskaya, 3 BC Basmanov, Moscow 105066, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	* *	*	* *	*
	Technopole Company, 5–183 Entuziastov Street, Dubna, Moscow Region, Russia 141980; *and* 12 Aviamotornaya Street, Moscow, Russia 111024.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	* *	*	* *	*
	Vostokgazprom, OAO, a.k.a., the following two aliases: —Otkrytoe Aktsionernoe Obshchestvo 'Vostokgazprom'; *and* —Vostokgazprom. d.73 ul.Bolshaya Podgornaya, Tomsk, Tomskaya obl. 634009, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.
	* *	*	* *	*
	Yamalgazinvest, ZAO, a.k.a., the following two aliases: —Yamalgazinvest; *and* —Zakrytoe Aktsionernoe Obshchestvo 'Yamalgazinvest'. d. 41 korp. 1 prospekt Vernadskogo, Moscow 117415, Russia.	For all items subject to the EAR when used in projects specified in § 746.5 of the EAR.	See § 746.5(b) of the EAR.	81 FR [INSERT FR PAGE NUMBER] September 7, 2016.

* * * * * * *

Dated: September 1, 2016.

Eric L. Hirschhorn,

Under Secretary of Commerce for Industry and Security.

[FR Doc. 2016–21431 Filed 9–6–16; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 800

[Docket ID: OSM–2016–0006; S1D1S SS08011000 SX064A000 167S180110; S2D2S SS08011000 SX064A000 16XS501520]

Petition To Initiate Rulemaking; Ensuring That Companies With a History of Financial Insolvency, and Their Subsidiary Companies, Are Not Allowed To Self-Bond Coal Mining Operations

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Decision on petition for rulemaking.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing our final decision on a petition for rulemaking that was submitted by WildEarth Guardians. The petition requested that we revise our current regulations to better ensure that self-bonded companies provide sufficient information to guarantee that reclamation obligations are adequately met and that the self-bonded entity is financially solvent. The Director has decided to grant the petition, although we do not intend to propose the specific rule changes requested in the petition. We will initiate a rulemaking to address this issue as discussed more fully below.

DATES: September 7, 2016.

ADDRESSES: Copies of the petition and other relevant materials comprising the administrative record of this petition are available for public review and copying at the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 252 SIB, 1951 Constitution Avenue NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Michael Kuhns, Division of Regulatory Support, 1951 Constitution Ave. NW., Washington, DC 20240; Telephone: 202–208–2860; Email: *mkuhns@osmre.gov.*

SUPPLEMENTARY INFORMATION:

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I. How does the petition process operate?

On March 3, 2016, we received a petition from WildEarth Guardians (petitioner) requesting that OSMRE amend its self-bonding regulations at 30 CFR 800.23 to ensure that companies with a history of financial insolvency, and their subsidiary companies, are not allowed to self-bond coal mining operations. WildEarth Guardians submitted this petition pursuant to section 201(g) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201(g), which provides that any person may petition the Director of OSMRE to initiate a proceeding for the issuance, amendment, or repeal of any regulation adopted under SMCRA. OSMRE adopted regulations at 30 CFR 700.12 to implement this statutory provision.

In accordance with our regulation at 30 CFR 700.12(c), we determined that WildEarth Guardians' petition set forth "facts, technical justification and law" establishing a "reasonable basis" for amending our regulations. Therefore, on May 20, 2016, we published a document in the **Federal Register** (81 FR 31880) seeking comments on whether we should deny the petition or whether the changes proposed by petitioners, or other changes beyond what the petitioners have proposed, should be made. On June 20, 2016, we published a document extending the comment period 30 days, until July 20, 2016 (81 FR 39875). We received 117,191 comments during the public comment period.

After reviewing the petition and public comments, the Director has decided to grant WildEarth Guardians' petition. Pursuant to 5 U.S.C. 553(e) and section 201(c)(2) of SMCRA, 30 U.S.C. 1211(c)(2), we plan to initiate rulemaking and publish a notice of proposed rulemaking with an appropriate public comment period. Although we are still considering the content of the proposed rule, we expect that it will contain updates and improvements to our regulations to ensure that reclamation obligations are adequately met and that any self-bonded entity is financially solvent. However, OSMRE does not intend to propose the petitioner's suggested rule language because it did not address important issues such as the process for evaluating applications for self-bonds, monitoring the financial health of self-bonded entities, and providing a mechanism for replacing self-bonds with other types of financial assurances if the need arises.

II. What is the substance of the petition?

The WildEarth Guardians' petition for rulemaking requests that OSMRE amend its self-bonding regulations at 30 CFR 800.23 to ensure that companies with a history of financial insolvency, and their subsidiary companies, are not allowed to self-bond coal mining operations. The petition claims that current rules allow regulatory authorities (RAs) to accept self-bond guarantees from subsidiary companies that are technically insolvent due to the financial status of their parent corporations, potentially shifting the financial burden for substantial mine reclamation costs to American taxpayers in the event the companies do not have the financial resources to complete their mine reclamation obligations.

In its petition, WildEarth Guardians provides draft regulatory language that it alleges will ensure that any entity, including non-parent corporate guarantors, will be subject to appropriate financial scrutiny before being allowed to self-bond. Specifically, WildEarth Guardians requests that we revise our self-bonding regulations to define the term "ultimate parent corporation," limit the total amount of present and proposed self-bonds to not exceed twenty-five (25) percent of the ultimate parent corporation's tangible net worth in the United States, and require that both the self-bonding applicant and its parent corporation meet any self-bonding financial conditions in 30 CFR 800.23, including the requirement that neither have filed for bankruptcy in the last five (5) years.

III. What do our current regulations regarding self-bonding require?

Our current regulations at 30 CFR 800.23 set minimum standards for accepting a self-bond from an applicant. Paragraph (a) provides definitions for the terms "current assets," "current liabilities," "fixed assets," "liabilities," "net worth," "parent corporation," and "tangible net worth." Paragraph (b) sets out the conditions that an applicant must meet before it can be eligible to self-bond. The applicant must designate a suitable agent to receive service of process, paragraph (b)(1); demonstrate continuous operation as a business entity for at least 5 years, paragraph (b)(2); submit financial information satisfying at least one of three financial tests, paragraph (b)(3); and submit various audited and unaudited financial statements, paragraph (b)(4). Paragraph (c) allows an RA to accept a written guarantee for an applicant's self-bond from a parent or "corporate" guarantor as long as the guarantor meets the conditions of paragraphs (b)(1) and (b)(4) of 30 CFR 800.23 and sets out the terms for a corporate guarantee. Paragraph (d) states that, in order for an RA to accept an applicant's self-bonds, the total amount of the outstanding and proposed self-bonds of the applicant must not exceed twenty-five (25) percent of the applicant's tangible net worth in the United States. Paragraph (e) provides the requirements for any indemnity agreements. Paragraph (f) allows an RA to require self-bonded applicants, parent and non-parent corporate guarantors to submit an update of the information required under paragraphs (b)(3) and (b)(4) of this section within 90 days after the close of each fiscal year following the issuance of the self-bond or corporate guarantee. Finally, paragraph (g) requires that, if at any time during the period when a self-bond is posted, the financial conditions of the applicant, parent or non-parent corporate guarantor change so that the criteria of paragraphs (b)(3) and (d) are not satisfied, the permittee must notify the RA and, within 90 days, post an alternate form of bond in the same amount as the self-bond. This paragraph also provides that if the permittee fails to post an adequate substitute bond, the regulatory provisions of § 800.16(e), addressing bond procedures in the event of bankruptcy or insolvency, will apply.

IV. What comments did we receive and how did we address them?

We received 117,191 comments on the petition for rulemaking. These comments can be divided into two major groups: those in favor of the rulemaking (over 99%) and those opposed (less than 1%, or fourteen unique comments).

Supporters of the petition expressed concern that the current self-bond regulations do not adequately protect the public from the risk that a self-bonded entity could declare bankruptcy and not have the funds to complete reclamation. These commenters pointed to multiple recent bankruptcies of self-bonded companies as evidence of the need for OSMRE to revise its self-bonding regulations to prevent those companies from qualifying for self-bonding just prior to declaring bankruptcy. Many commenters also expressed a desire for OSMRE to take some type of immediate action (such as banning self-bonding or providing guidance) until there is sufficient time to complete the formal rulemaking process. In support of the request for more immediate action, commenters pointed to the large amount of self-bonding by financially unstable companies that is at risk of becoming worthless in the ongoing bankruptcies.

Opponents of rulemaking asserted that most coal companies have a history of solvency and that even those companies currently in bankruptcy have continued to meet their reclamation obligations. Commenters also stated that they believed SMCRA and OSMRE's implementing regulations at 30 CFR 800.23 already provide adequate criteria for self-bonding and that the language proposed by petitioners would violate section 525 of the federal bankruptcy code, 11 U.S.C. 525(a), by discriminating against bankrupt entities. Commenters also expressed concern that more stringent self-bonding regulations would unnecessarily limit the flexibility of state RAs in determining whether to allow self-bonding. They assert that this would simply shift reclamation liability from one type of bonding instrument (self-bonding) to another (surety, letter of credit, collateral, or some other financial assurance), which the commenters allege would exacerbate current stresses on the coal market. Several commenters requested that OSMRE deny the petition and allow additional time for us to work with the Interstate Mining Compact Commission and state regulatory authorities to find a non-regulatory solution to the self-bonding problem.

V. What is the Director's decision?

After reviewing the petition and supporting materials, and after careful consideration of all comments received, OSMRE has decided to grant the petition. However, we do not plan to propose adoption of the specific regulatory changes suggested by the petitioner. Instead, we are examining broader regulatory changes to 30 CFR part 800 to update OSMRE's bonding regulations and ensure the completion of the reclamation plan if the regulatory authority has to perform the work in the event of forfeiture.

It is undisputed that the coal market is dramatically different from when our current self-bonding regulations were drafted. Diminished global demand for coal, competition from low cost shale gas, and the unprecedented and continuing retirement of coal-fired power plants are clear signs that the energy industry is undergoing a major transformation. It is incumbent upon OSMRE to protect the public's interests in connection with self-bonding. Without a rigorous financial investigation, both before accepting self-bond and throughout the duration of a self-bond, it is impossible to ensure that the public will be adequately protected from the risk that a self-bonded entity will have insufficient funds to complete all of the required reclamation.

During our evaluation of the petition and the comments, we discovered instances where self-bond applicants did not provide sufficient financial information for state RAs to make informed decisions about whether that applicant was financially stable enough to self-bond. We also discovered that, because the financial condition of some companies changed so quickly, state RAs have experienced difficulties requesting and/or receiving additional financial information from a self-bonded entity when the RA becomes aware that the financial situation of that entity has changed, and enforcing the requirement that a self-bonded entity notify the RA and obtain replacement bond when it no longer qualifies for self-bonding under the regulations. Our current regulations look at companies' historical performance in order to assess their future solvency instead of using criteria that are more forward looking. For example, some companies qualified for self-bonding just months before the company declared bankruptcy, in part by providing year-old financial data that did not reflect the dramatic changes in the coal market and the declining financial health of those self-bonded entities in the intervening year. In other instances, the financial information came too late or too slowly for RAs to take enforcement action before the company declared bankruptcy. Once a self-bonded company files for bankruptcy, obtaining replacement bonds becomes significantly more difficult. We have concluded that the current regulations do not require use of the most appropriate financial tests, both before a self-bond is approved and during the life of a self-bond.

In light of these findings, OSMRE will consider proposing a number of changes to our regulations. We anticipate reviewing the definitions in 30 CFR 800.23(a), as well as reviewing the existing financial tests and documentation required under 30 CFR 800.23(b), to ensure that the self-bond applicant is financially stable. We also will consider developing a systematic review process for ascertaining whether self-bonded entities remain financially healthy and for spotting any adverse trends that might necessitate replacing a self-bond with a different type of financial assurance. We will also consider if we need to provide an independent third party review of the self-bonding entity's annual financial reports and certification of the current and future financial ability of the self-bonding entity. Lastly, we may propose additional procedures for replacing self-bonds in the event that a company no longer meets the financial tests and to clarify the penalties for an entity's failure to disclose a change in financial status.

As mentioned above, we may also propose revisions to other bonding requirements, and explore the possibility of the creation of new financial assurance instruments to provide industry more options. We will likely explore the potential of requiring diversified financial assurances. Relying on just one type of financial assurance, such as self-bond or a surety bond from just one company, could be risky in an uncertain financial market. We are also likely to explore ways to make sure there is sufficient collateral to cover all reclamation obligations. Under our current regulations, the same small set of assets has been used as collateral for multiple liabilities. In a number of cases, the aggregate amount of these liabilities has been far greater than the value of the assets used as collateral, with the result that reclamation obligations are at risk of not being met. We will explore ways to address this problem, such as assessing the merits of requiring that a percentage of all bonds be supported by collateral that is not subject to any other lien nor used as collateral for any other mine or other liability. In addition, we need to explore the possibility of establishing criteria to create a greater incentive for self-bonded companies to timely complete reclamation and apply for final bond release. Companies that have surety bonds either pay a fee for the bond or have some sort of collateral that is being held by the surety company. These frozen assets give them an incentive to complete reclamation that self-bonded companies do not have. Finally, we will examine concerns raised over certain sureties' reliance on a cash-flow basis to cover the cost of reclamation when their bonds are forfeited.

We believe that carefully considered revisions to our regulations will better (1) ensure the completion of the reclamation plan as required in section 509(a) of SMCRA, 30 U.S.C. 1259(a), (2) guarantee that an applicant demonstrates a history of financial solvency and continuous operation sufficient for authorization to self-insure as required in section 509(c) of SMCRA, 30 U.S.C. 1259(c), and (3) assure that surface coal mining operations are conducted to protect the environment, 30 U.S.C. 1202(d).

As we begin to examine broader regulatory changes, we will seek specific input from the many stakeholders about their ideas of how to improve our regulations. The state RAs have many years of experience with self-bonding and we will ask that they provide specific suggestions on how to improve our regulations to ensure they have adequate financial assurance to complete reclamation of each mine.

VI. Procedural Matters and Determinations

This document is not a proposed or final rule, policy, or guidance. Therefore, it is not subject to the Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act, the Paperwork Reduction Act, the Unfunded Mandates Reform Act, or Executive Orders 12866, 13563, 12630, 13132, 12988, 13175, and 13211. We will conduct the analyses required by these laws and executive orders when we develop a proposed rule.

In developing this document, we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554, section 15).

This document is not subject to the requirement to prepare an Environmental Assessment or Environmental Impact Statement under the National Environmental Policy Act (NEPA), 42 U.S.C. 4332(2)(C), because no proposed action, as described in 40 CFR 1508.18(a) and (b), yet exists. This document only announces the Director's decision to grant a petition and initiate rulemaking. We will prepare the appropriate NEPA compliance documents as part of the rulemaking process.

Dated: August 19, 2016.

Glenda H. Owens,

Assistant Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 2016–21440 Filed 9–6–16; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 252

[Docket ID: DOD–2012–OS–0170]

RIN 0790–AI98

Professional U.S. Scouting Organization Operations at U.S. Military Installations Overseas; Technical Amendment

AGENCY: Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Final rule; technical amendment.

SUMMARY: On January 25, 2016, the Department of Defense published a final rule, 81 FR 3959–3962, titled Professional U.S. Scouting Organization Operations at U.S. Military Installations Overseas. DoD is making a technical amendment due to the discovery of a mistake regarding the use of nonappropriated funds. A paragraph in the final rule incorrectly stated nonappropriated funds cannot be used to reimburse salaries and benefits of qualified scouting organization employees. Nonappropriated funds may be used to reimburse salaries and benefits of employees of qualified scouting organizations for periods during which their professional scouting employees perform services in overseas areas in direct support of DoD personnel and their families.

DATES: This rule is effective September 7, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Toppings, 571–372–0485.

SUPPLEMENTARY INFORMATION: This technical amendment amends 32 CFR part 252 to read as set forth in the amendatory language in this final rule.

List of Subjects in 32 CFR Part 252

Military installations, Military personnel, Scout organizations.

Accordingly 32 CFR part 252 is amended as follows:

PART 252—PROFESSIONAL U.S. SCOUTING ORGANIZATION OPERATIONS AT U.S. MILITARY INSTALLATIONS OVERSEAS

■ 1. The authority citation for part 252 continues to read as follows:

Authority: E.O. 12715, May 3, 1990, 55 FR 19051; 10 U.S.C. 2606, 2554, and 2555.

■ 2. Amend § 252.6 by revising paragraph (a)(6)(i) to read as follows:

§ 252.6 Procedures.

(a) * * *

(6) * * *

(i) APF is not used to reimburse their salaries and benefits.

* * * * *

Dated: August 30, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–21254 Filed 9–6–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0847]

Drawbridge Operation Regulation; Lake Washington Ship Canal, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Montlake Bridge across the Lake Washington Ship Canal, mile 5.2, at Seattle, WA. The Montlake Bridge is a double leaf bascule bridge. The deviation is necessary to allow work crews to replace bridge decking. This deviation allows a single leaf opening with a one hour advance notice during the day, and remains in the closed-to-navigation position at night.

DATES: This deviation is effective from 6 a.m. on September 24, 2016 to 6 a.m. on September 26, 2016.

ADDRESSES: The docket for this deviation, [USCG–2016–0847] is available at *http://www.regulations.gov.* Type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Steven Fischer, Bridge Administrator, Thirteenth Coast Guard District; telephone 206–220–7282, email *d13-pf-d13bridges@uscg.mil.*

SUPPLEMENTARY INFORMATION: Washington Department of Transportation has requested a temporary deviation from the operating schedule for the Montlake Bridge across the Lake Washington Ship Canal, at mile 5.2, at Seattle, WA. The deviation is necessary to accommodate work crews to conduct timely bridge deck repairs. The Montlake Bridge in the closed position provides 30 feet of vertical clearance throughout the navigation channel, and 46 feet of vertical clearance throughout the center 60 feet of the bridge; vertical clearance references to the Mean Water Level of Lake Washington. When half the span is open, single leaf, 46 feet of vertical clearance will be reduced throughout the center to 30 feet of the bridge. To facilitate this event, the north half of the bridge span will open with at least a one hour advance notice provided to the bridge operator from 6 a.m. to 6 p.m. From 6 p.m. to 6 a.m., the Montlake Bridge span will remain in the closed-to-navigation position, or full closure.

The deviation period is from 6 a.m. until 6 p.m. on September 24, 2016 (north single leaf opening if a one hour notice is given); from 6 p.m. on September 24, 2016 until 6 a.m. on September 25, 2016 (span remain in the closed-to-navigation position); from 6 a.m. until 6 p.m. on September 25, 2016 (north single leaf opening if a one hour notice is given); from 6 p.m. on September 25, 2016 until 6 a.m. on September 26, 2016 (span remain in the closed-to-navigation position). The normal operating schedule for the Montlake Bridge operates in accordance with 33 CFR 117.1051(e).

Waterway usage on the Lake Washington Ship Canal ranges from commercial tug and barge to small pleasure craft. Vessels able to pass through the bridge in the closed-to-navigation position may do so at any time. The bridge will be able to open for emergency vessels in route to a call when an hour notice is given to the bridge operator, and a single leaf opening will be provided. The Lake Washington Ship Canal has no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: August 25, 2016.

Steven M. Fischer,

Bridge Administrator, Thirteenth Coast Guard District.

[FR Doc. 2016–21448 Filed 9–6–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2016–0745]

Safety Zone; North Atlantic Ocean, Virginia Beach, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce safety zone regulations for a fireworks display taking place offshore the Virginia Beach oceanfront in the vicinity of the 20th Street, Virginia Beach, VA, on October 1, 2016. This action is necessary to ensure safety of life on navigable waters during this event. Our regulation for Recurring Marine Events within the Fifth Coast Guard District identifies the regulated area for this fireworks display event. During the enforcement period, no person or vessel may enter, transit through, anchor in, or remain within the regulated area without approval from the Captain of the Port Hampton Roads or a designated representative.

DATES: From 8:30 p.m. through 10 p.m. on October 1, 2016, the regulations in 33 CFR 165.506 will be enforced for the safety zone regulated area listed in row (c) 9 of the table to § 165.506.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email ENS Chandra Saunders, U.S. Coast Guard Sector Hampton Roads (WWM); telephone 757–668–5582, email *Chandra.M.Saunders@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone regulations in 33 CFR 165.506 from 8:30 p.m. until 10 p.m. on October 1, 2016, for the safety zone regulated area listed in row (c) 9 of the table to § 165.506. This enforcement is related to a fireworks display that is part of the Virginia Beach Neptune Festival, on the North Atlantic Ocean, Virginia Beach, VA. This action is being taken to provide for the safety of life on navigable waterways during this event.

Our regulation for Recurring Marine Events within the Fifth Coast Guard District, § 165.506, specifies the location of the regulated area for this safety zone within a 1000 yard radius of the center located near the shoreline at approximate position latitude 36°51′12″ N., longitude 075°58′06″ W., located off Virginia Beach, VA between 17th and 31st streets. As specified in § 165.506 (d), during the enforcement period, no vessel may not enter, remain in, or transit through the safety zone without approval from the Captain of the Hampton Roads (COTP) or a COTP designated representative. The Coast Guard may be assisted by other Federal, state or local law enforcement agencies in enforcing this regulation.

This notice of enforcement is issued under authority of 33 CFR 165.506(d) and 5 U.S.C. 552 (a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners and marine information broadcasts.

Dated: August 17, 2016.

Richard J. Wester,

Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads, VA.

[FR Doc. 2016–21476 Filed 9–6–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG- 2016–0788]

Eighth Coast Guard District Annual Safety Zones; Pittsburgh Pirates Fireworks; Allegheny River Mile 0.2 to 0.8

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for the Pittsburgh Pirates Fireworks on the Allegheny River, from mile 0.2 to 0.8, to protect vessels transiting the area and event spectators from the hazards associated with the Pittsburgh Pirates land-based fireworks displays following certain home games throughout the season. During the enforcement period, entry into, transiting, or anchoring in the safety zone is prohibited to all vessels not registered with the sponsor as participants or official patrol vessels, unless specifically authorized by the Captain of the Port (COTP) Pittsburgh or a designated representative.

DATES: The regulations in 33 CFR 165.801 Table 1, Sector Ohio Valley, No. 1 will be enforced from 8:00 p.m. until 11:30 p.m., on September 10, 2016 with a rain date to occur within 48 hours of the scheduled date.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email MST1

Jennifer Haggins, Marine Safety Unit Pittsburgh, U.S. Coast Guard; telephone 412–221–0807, email *Jennifer.L.Haggins@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Safety Zone for the annual Pittsburgh Pirates Fireworks listed in 33 CFR 165.801 Table 1, Sector Ohio Valley, No. 1 from 8:00 p.m. to 11:30 p.m. on September 10, 2016. Should inclement weather require rescheduling, the safety zone will be within 48 hours of the scheduled date. Entry into the safety zone is prohibited unless authorized by the COTP or a designated representative. Persons or vessels desiring to enter into or passage through the safety zone must request permission from the COTP or a designated representative. If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

This notice of enforcement is issued under authority of 33 CFR 165.801 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Local Notice to Mariners and updates via Marine Information Broadcasts.

L. Mcclain, Jr.,

Commander, U.S. Coast Guard, Captain of the Port Pittsburgh.

[FR Doc. 2016–21439 Filed 9–6–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2013–0235; FRL–9950–04]

Chlorantraniliprole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of chlorantraniliprole in or on multiple commodities which are identified and discussed later in this document. Interregional Research Project Number 4 (IR–4) requested the tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective September 7, 2016. Objections and requests for hearings must be received on or before November 7, 2016, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2013–0235, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2013–0235 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before November 7, 2016. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2013–0235, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-for Tolerance

In the **Federal Register** of June 22, 2016 (81 FR 40594) (FRL–9947–32), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP# 6E8477) by IR–4, 500 College Road East, Princeton, NJ 08540. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the insecticide chlorantraniliprole, 3-bromo-*N*-[4-chloro-2-methyl-6-[(methylamino)-carbonyl]phenyl]-1-(3-chloro-2-pyridinyl)-1*H*-pyrazole-5-carboxamide, in or on the raw agricultural commodities teff, forage at

40 parts per million (ppm); teff, grain at 6.0 ppm; teff, hay at 40 ppm; teff, straw at 40 ppm; quinoa, forage at 40 ppm; quinoa, grain at 6.0 ppm; quinoa, hay at 40 ppm; and quinoa, straw at 40 ppm. That document referenced a summary of the petition prepared on behalf of IR–4 by DuPont Crop Protection, the registrant, which is available in the docket EPA–HQ–OPP–2013–0235 at *http://www.regulations.gov.*

A comment was received on the notice of filing. EPA's response to this comment is discussed in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for chlorantraniliprole in or on teff forage, grain, hay and straw as well as quinoa forage, grain, hay and straw, consistent with FFDCA section 408(b)(2).

In the **Federal Register** of February 7, 2014 (79 FR 7397) (FRL–9905–56), EPA established tolerances for residues of chlorantraniliprole in or on fruit, stone, group 12–12, except cherry, chickasaw plum, and damson plum at 4.0 ppm; onion, green subgroup 3–07B at 3.0 ppm; peanut, hay at 90 ppm; and peanut at 0.06 ppm. EPA is relying upon the risk assessments that supported the findings made in the February 7, 2014 **Federal Register** document in support of this action. The toxicity profile of chlorantraniliprole has not changed, and the previous risk assessments that supported the establishment of those tolerances remain valid.

The Agency evaluated the request to establish tolerances in or on quinoa and teff forage, grain, hay, and straw and concluded that the aggregate exposure and risks would not increase as a result of the proposed use on quinoa and teff and are the same as those estimated in the February 7, 2014 final rule.

Both quinoa and teff are prepared like other whole grains, such as rice and barley, and may also be used to make flour in a manner similar to wheat and other cereal grains. Therefore, EPA concludes that teff and quinoa will likely substitute in the diet for cereal grain foods, which are subject to tolerances for chlorantraniliprole, and would be assumed to contain similar residues. Additionally, since teff and quinoa use patterns are similar to those for wheat and barley, increased exposures to individuals through drinking water is not expected. Thus, the proposed teff and quinoa uses will not result in higher dietary exposure estimates.

With respect to livestock commodities, residues of chlorantraniliprole in teff and quinoa livestock feeds are expected to be similar to those in other forages, hays, and silages for which chlorantraniliprole is currently registered. Therefore, there would be no increase in the livestock dietary burden should teff and quinoa be substituted in the livestock diet for other hays and silages; residues in meat, milk, poultry and eggs will remain the same.

EPA concludes that the aggregate exposure and risk estimates presented in the most recent human health risk assessment document, which were not of concern to the Agency, adequately account for exposures and risk resulting from all chlorantraniliprole uses including the proposed teff and quinoa uses.

Therefore, EPA relies upon the findings made in the February 7, 2014 **Federal Register** document in support of this rule. EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to chlorantraniliprole residues.

For a detailed discussion of the aggregate risk assessments and determination of safety for these tolerances, please refer to the February 7, 2014 **Federal Register** document and its supporting documents, available at *http://www.regulations.gov* in docket ID number EPA–HQ–OPP–2013–0235. Further information about EPA's determination that an updated risk assessment was not necessary may be found in the document, "Chlorantraniliprole: Aggregate Human Health Risk Assessment for the Proposed New Uses on Teff and Quinoa" in docket ID number EPA–HQ–OPP–2013–0235.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology, liquid chromatography mass spectrometry/mass spectrometry (LC/MS/MS); Method DuPont-11374, is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

There are no Codex MRLs for chlorantraniliprole residues in or on quinoa or teff.

C. Response to Comments

EPA received one comment to the Notice of Filing that stated, in part, that this chemical is "dangerous to America and to health of our people and life in America" and that EPA should "deny those applications from the profiteers whose only aim is to make money at our expense." The Agency understands the commenter's concerns and recognizes that some individuals believe that pesticides should be banned on agricultural crops. However, the existing legal framework provided by section 408 of the FFDCA states that tolerances may be set when persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute. This citizen's comment appears to be directed at the underlying statute and not EPA's implementation of it; the citizen has made no contention that EPA has acted in violation of the statutory framework.

V. Conclusion

Therefore, tolerances are established for residues of chlorantraniliprole, 3-bromo-*N*-[4-chloro-2-methyl-6-[(methylamino)-carbonyl]phenyl]-1-(3-chloro-2-pyridinyl)-1*H*-pyrazole-5-carboxamide, in or on quinoa, forage at 40 ppm; quinoa, grain at 6.0 ppm; quinoa, hay at 40 ppm; and quinoa, straw at 40 ppm; teff, forage at 40 ppm; teff, grain at 6.0 ppm; teff, hay at 40 ppm; and teff, straw at 40 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 26, 2016.

Michael Goodis,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.628, add alphabetically the entries "Quinoa, forage", "Quinoa, grain", "Quinoa, hay", "Quinoa, straw", "Teff, forage", "Teff, grain", "Teff, hay", and "Teff, straw" to the table in paragraph (a) to read as follows:

§ 180.628 Chlorantraniliprole; pesticide tolerances.

(a) * * *

Commodity	Parts per million
* * *	* *
Quinoa, forage	40
Quinoa, grain	6.0
Quinoa, hay	40
Quinoa, straw	40
* * *	* *
Teff, forage	40
Teff, grain	6.0
Teff, hay	40
Teff, straw	40
* * *	* *

* * * * *

[FR Doc. 2016–21458 Filed 9–6–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[EPA–R04–OW–2016–0356; FRL–9951–96–Region 4]

Ocean Dumping: Modification of an Ocean Dredged Material Disposal Site Offshore of Charleston, South Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule and technical amendment.

SUMMARY: The Environmental Protection Agency (EPA) is approving a modification of the ocean dredged material disposal site (ODMDS) offshore of Charleston, South Carolina pursuant to the Marine Protection, Research and Sanctuaries Act, as amended (MPRSA). The primary purpose for the site modification is to serve the long-term need for a location to dispose of material dredged from the Charleston Harbor federal navigation channel, and to provide a location for the disposal of dredged material for persons who have received a permit for such disposal. The modified site will be subject to ongoing monitoring and management to ensure continued protection of the marine environment. In addition, the EPA now issues a technical amendment to correct a clerical error in the proposed rule.

DATES: The effective date of this final action shall be October 7, 2016.

ADDRESSES: *Docket:* All documents in the Docket are listed in the *www.regulations.gov* index. Although listed in the index, some information may not be publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available or in hard copy at the EPA Region 4 Office, 61 Forsyth Street SW., Atlanta, Georgia 30303. The file will be made available for public inspection in the Region 4 library between the hours of 9:00 a.m. and 4:30 p.m. weekdays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make your appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents.

FOR FURTHER INFORMATION CONTACT: Gary W. Collins, U.S. Environmental Protection Agency, Region 4, Water Protection Division, Marine Regulatory and Wetlands Enforcement Section, 61 Forsyth Street, Atlanta, Georgia 30303; phone number (404) 562–9395; email: *collins.garyw@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Potentially Affected Persons

Persons potentially affected by this action include those who seek or might seek permits or approval to dispose of dredged material into ocean waters pursuant to the Marine Protection, Research, and Sanctuaries Act, as amended (MPRSA), 33 U.S.C. 1401 to 1445. The EPA's action would be relevant to persons, including organizations and government bodies seeking to dispose of dredged material in ocean waters offshore of Charleston, South Carolina. Currently, the U.S. Army Corps of Engineers (USACE) would be most affected by this action. Potentially affected categories and persons include:

Category	Examples of potentially regulated persons
Federal government	U.S. Army Corps of Engineers Civil Works projects, U.S. Navy and other Federal agencies.
Industry and general public	Port authorities, marinas and harbors, shipyards and marine repair facilities, berth owners.
State, local and tribal governments	Governments owning and/or responsible for ports, harbors, and/or berths, Government agencies requiring disposal of dredged material associated with public works projects.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding persons likely to be affected by this action. For any questions regarding the applicability of this action to a particular person, please refer to the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

A. History of Disposal Sites Offshore of Charleston, South Carolina

The existing Charleston ODMDS is located approximately 9 nautical miles (nmi) southeast of the mouth of Charleston Harbor on the continental shelf off the coast of South Carolina. It is currently 12.1 nmi^2 in size, with an authorized disposal zone that is 3.0 nmi^2 in size. Since 1896, the area now designated as the Charleston ODMDS and vicinity has been used for disposal of dredged material (*e.g.*, sand, silt, clay, rock) primarily from the Charleston Harbor Navigation Project. The Charleston ODMDS received interim site designation status in 1977 and final designation in 1987. The discovery of live bottom habitats within the original site resulted in several modifications to use of the site resulting in the creation of the restricted disposal zone.

The USACE Charleston District and the EPA Region 4 have identified a need to either designate a new ODMDS or expand the existing Charleston ODMDS. The need for expanding current ocean disposal capacity is based on future capacity modeling, historical dredging volumes, estimates of dredging volumes for future proposed projects, and limited capacity of upland confined disposal facilities (CDFs) in the area.

The modification of the ODMDS for dredged material does not mean that the USACE or the EPA has approved the use of the ODMDS for open water disposal of dredged material from any specific project. Before any person can dispose dredged material at the ODMDS, the EPA and the USACE must evaluate the project according to the ocean dumping regulatory criteria (40 CFR, part 227) and authorize the disposal. The EPA independently evaluates proposed dumping and has the right to restrict and/or disapprove of the actual disposal of dredged material if the EPA determines that environmental requirements under the MPRSA have not been met.

B. Location and Configuration of Modified Ocean Dredged Material Disposal Site

This action modifies the ODMDS offshore of Charleston, South Carolina. The location of the modified ODMDS is bounded by the coordinates, listed below. The modification of the ODMDS will allow the EPA to adaptively manage the ODMDS to maximize its capacity, minimize the potential for mounding and associated safety concerns, potentially create hard bottom habitat and minimize the potential for any long-term adverse effects to the marine environment.

The coordinates for the site are, in North American Datum 83 (NAD 83): Modified Charleston ODMDS

(A) 32°36.280′ N., 79°43.662′ W.
(B) 32°37.646′ N., 79°46.576′ W.
(C) 32°39.943′ N., 79°45.068′ W.
(D) 32°38.579′ N., 79°42.152′ W.

The modified ODMDS is located in approximately 30 to 45 feet of water, and is located to approximately 6.0 nmi offshore. The modified ODMDS would be 7.4 nmi^2 in size.

C. Response to Comments Received

On July 13, 2016, the EPA published a proposed rule to modify the site and opened a public comment period under Docket ID No. EPA–R04–OW–2016–0356. The comment period ended on August 12, 2016. The EPA received two comments on the proposed rule. One comment was from the U.S. Department of Interior stating that they had no comments at this time. The second comment was from the U.S. National Oceanic and Atmospheric Administration in regards to a clerical error with three site coordinates describing the location of the ODMDS. The EPA acknowledges the error and is making corrections as described in the technical amendment section below.

D. Management and Monitoring of the Site

The modified ODMDS is expected to receive sediments dredged by the USACE to deepen and maintain the federally authorized navigation project at Charleston Harbor, South Carolina, and dredged material from other persons who have obtained a permit for the transportation of dredged material for the purpose of disposal at the ODMDS. All persons using the ODMDS are required to follow a Site Management and Monitoring Plan (SMMP) for the ODMDS. The SMMP includes management and monitoring requirements to ensure that dredged materials disposed at the ODMDS are suitable for disposal in the ocean and that adverse impacts of disposal, if any, are addressed to the maximum extent practicable. The SMMP for the modified ODMDS, in addition to the aforementioned, also addresses management of the ODMDS to ensure adverse mounding does not occur, promotes habitat creation where possible and to ensure that disposal events minimize interference with other uses of ocean waters in the vicinity of the modified ODMDS. The SMMP, which was available for public review, is currently being routed for signature by the Charleston District Engineer.

E. MPRSA Criteria

In modifying the ODMDS, the EPA assessed the modified ODMDS according to the criteria of the MPRSA, with particular emphasis on the general and specific regulatory criteria of 40 CFR part 228, to determine whether the site modification satisfies those criteria. The EPA's *Final Environmental Assessment for Modification of an Ocean Dredged Material Disposal Site Offshore Charleston, South Carolina, [June 2016] (EA),* provides an extensive evaluation of the criteria and other related factors for the modification of the ODMDS.

General Criteria (40 CFR 228.5)

(1) Sites must be selected to minimize interference with other activities in the marine environment, particularly avoiding areas of existing fisheries or shellfisheries, and regions of heavy commercial or recreational navigation (40 CFR 228.5(a)).

Dredged material disposal within the existing Charleston ODMDS has been confined to the eastern side of the designated site within a defined 4-mi² disposal zone to avoid impacts to live hardbottom. During this time, dredged material disposal at the site has not interfered with commercial or recreational navigation, commercial fishing, or sportfishing activities. The modification of the site boundaries to the north, east, and south is not expected to change these conditions. This action avoids major fisheries, natural and artificial reefs, and areas of recreational use. Modification of the site to the east will minimize interference with shellfisheries by avoiding areas located primarily to the west of the ODMDS that are frequently used by commercial shrimpers. Construction of the berm will provide an additional approximately 427 acres of hardbottom habitat and will protect existing hardbottom habitat by minimizing sediment transport. There will be a 3000-foot buffer along the northern perimeter of the ODMDS where dumping will not occur. Modeling results indicate that this buffer should be sufficient to protect probable hardbottom areas to the north of the site.

(2) Sites must be situated such that temporary perturbations to water quality or other environmental conditions during initial mixing caused by disposal operations would be reduced to normal ambient levels or undetectable contaminant concentrations or effects before reaching any beach, shoreline, marine sanctuary, or known geographically limited fishery or shellfishery (40 CFR 228.5(b)).

The ODMDS modification area will be used for disposal of suitable dredged material as determined by Section 103 of the MPRSA. Based on the USACE and EPA sediment testing and evaluation of dredged maintenance material and proposed new work material from the Post 45 deepening project, disposal is not expected to have any long-term impact on the water quality. Results of the maximum concentration found outside the disposal area after 4 hours of mixing for each dredging unit was zero. Based on these results, water quality perturbations that could reach any beach, shoreline, marine sanctuary, or known geographically-limited fishery or shellfishery are not expected. The western edge of the modified ODMDS is approximately 7 miles offshore such that prevailing current will not transport dredged material to beaches. Water quality perturbations caused by dispersion of disposal material will be reduced to ambient conditions before reaching any environmentally sensitive areas.

(3) The sizes of disposal sites will be limited in order to localize for identification and control any immediate adverse impacts, and to permit the implementation of effective monitoring and surveillance to prevent adverse long-range impacts. Size, configuration, and location are to be determined as part of the disposal site evaluation (40 CFR 228.5(d)).

The location, size, and configuration of the modified ODMDS provides long-term capacity, site management, and site monitoring while limiting environmental impacts to the surrounding area. Based on 25 years of projected new work and maintenance dredged material disposal needs, it is estimated that the ODMDS modification area should accommodate approximately 66.5 mcy of dredged material in order to meet the long-term disposal needs of the area. The dump zone within the modified ODMDS is estimated to have approximately 75 mcy of capacity. The capacity in the dump zone provides a reasonable amount of additional capacity to manage risk, account for future unknown disposal operations from private entities, and provides a margin of navigation safety. The remaining area within the boundaries of the existing 12 nmi² Charleston ODMDS (parallelogram) would be de-designated. The area to be de-designated is approximately 10.4 mi² (7.8 nmi²) in size and contains documented hardbottom habitat.

By adding 5.8 mi² (4.4 nmi²) to the existing ODMDS disposal zone, the total area of the modified Charleston ODMDS would be 9.8 mi² (7.4 nmi²), with a dump zone area of 5.1 mi² (3.9 nmi²). An ODMDS of this size and capacity will provide a long-term ocean disposal option for the region.

To help protect nearby hardbottom habitat from being buried by sediment migrating from the ODMDS, a U-shaped berm along the east, south, and west perimeters of the modified ODMDS will be constructed. Although there is probable hardbottom located north of the modified ODMDS, no berm will be constructed along the northern boundary. However, there will be a 3000-foot buffer along the northern perimeter of the ODMDS where dumping will not occur. Fate modeling indicates that this buffer should be sufficient to protect probable hardbottom areas to the north of the site.

When determining the size of the modified site, the ability to implement effective monitoring and surveillance programs, among other things, was factored in to ensure that navigational safety would not be compromised and to prevent mounding of dredged material, which could result in adverse wave conditions. A site management and monitoring program will be implemented to determine if disposal at the site is significantly affecting adjacent areas and to detect the presence of long-term adverse effects. At a minimum, the monitoring program will consist of bathymetric surveys, sediment grain size analysis, chemical analysis of constituents of concern in the sediments, and a health assessment of the benthic community.

(4) EPA will, wherever feasible, designate ocean dumping sites beyond the edge of the continental shelf and other such sites where historical disposal has occurred (40 CFR 228.5(e)).

The continental slope is approximately 55 nmi offshore of Charleston. Disposal off the continental shelf (shelf break) was evaluated in detail the 1983 ODMDS Designation EIS document. In comparison to locating the site in the nearshore region, it was determined that monitoring and surveillance would be more difficult and expensive in the shelf break area because of the distance from shore to the deeper waters. Transporting material to and performing long-term monitoring of a site located off the continental shelf is not economically or operationally feasible.

The historically used ocean dumping site, Charleston ODMDS, is not located beyond the continental shelf. A portion of the modified ODMDS encompasses an area previously designated for disposal.

Specific Criteria (40 CFR 228.6)

(1) Geographical position, depth of water, bottom topography and distance from coast (40 CFR 228.6(a)(1)).

The modified ODMDS is located on the shallow continental shelf, approximately 6 nmi offshore of Charleston, South Carolina. Water depths range from −30 to −45 feet (9 to 13 meters) with an overall average depth of −40 feet (12 meters). Characteristics of the South Atlantic Bight seafloor include low relief, relatively gentle gradients, and smooth bottom surfaces exhibiting physiographic features contoured by erosional processes. Sediments largely consist of fine to coarse sands. Some areas contain extensive coarse grains and shell hash. Fines were found to be typically less than 10%.

(2) Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases (40 CFR 228.6(a)(2)).

The modified ODMDS is not located in exclusive breeding, spawning, nursery, feeding, or passage areas for adult or juvenile phases of living resources. The intensity of these activities within the vicinity of the ODMDS is seasonally variable, with peaks typically occurring in the spring and early fall for most commercially important finfish and shellfish species (USEPA 1983). The ODMDS is not located within North Atlantic right whale critical habitat.

(3) Location in relation to beaches and other amenity areas (40 CFR 228.6(a)(3)).

The center of the modified ODMDS is approximately 7 mi (6 nmi) from the nearest coastal beach. The site is approximately 3.1 mi (2.7 nmi) south of the nearest artificial reef. No significant impacts to beaches or amenity areas associated with the existing ODMDS have been documented.

(4) Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the waste, if any (40 CFR 228.6(a)(4)).

Only material that meets EPA Ocean Dumping Criteria in 40 CFR 220–229 will be placed in the ODMDS. Average annual maintenance material is approximately 1.4 mcy and approximately 31.2 mcy of new work material is expected from the Charleston Harbor Deepening Project. Sediments dredged from Charleston Harbor and the entrance channel are a mixture of silt, sand, and rock. Hopper dredge, barge, and scow combinations are the usual vehicles of transport for the dredged material. None of the material is packaged in any manner.

(5) Feasibility of surveillance and monitoring (40 CFR 228.6(a)(5)).

The EPA expects monitoring and surveillance at the modified ODMDS to be feasible and readily performed from ocean or regional class research vessels. The modified ODMDS is of similar size, water depth and distance from shore as are a majority of the ODMDSs within the Southeastern United States which are routinely monitored. The EPA will ensure monitoring of the site for physical, biological and chemical attributes as well as for potential impacts beyond the site boundaries. Bathymetric surveys will be conducted routinely as defined in the SMMP, contaminant levels in the dredged material will be analyzed prior to dumping, and the benthic infauna and epibenthic organisms will be monitored every 10 years, as funding allows.

(6) Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any (40 CFR 228.6(a)(6)).

A study conducted by EPA from 2013–2015 indicated that currents in the vicinity of the Charleston ODMDS tend to have a significant tidal component with predominant currents in the cross-shore direction. The depth-averaged median current velocity was 18 cm/sec (0.6 ft/sec) with 90% of the measurements below 30 cm/sec (1.1 ft/sec). Wind-driven circulation is the most important factor in controlling sediment transport. Strong winds generate waves that steer the sediment on the seabed and create large nearbed suspended sediment concentrations. Suspended sediment transport is directed mainly NE and SW in response to local wind climate and the wind-generated alongshore flows. LTFATE and MPFATE modeling results over a 25-year period indicate depths of sediment deposited outside the boundaries of the ODMDS will not exceed the 5 cm deposition contour guidance provided by EPA.

(7) Existence and effects of current and previous discharges and dumping in the area (including cumulative effects) (40 CFR 228.6(a)(7)).

Previous disposal of dredged material resulted in temporary increases in suspended sediment concentrations during disposal operations, localized mounding within the site, burial of benthic organisms within the site, changes in the abundance and composition of benthic assemblages, and changes in the sediment composition from sandy sediments to finer-grained silts. Impacts to live bottoms were identified in the western portion of the 12-mi² ODMDS.

Short-term, long-term, and cumulative effects of dredged material disposal in the ODMDS modification area would be similar to those for the existing ODMDS.

(8) Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean (40 CFR 228.6(a)(8)).

The modified ODMDS is not expected to interfere with shipping, fishing, recreation or other legitimate uses of the ocean. Commercial navigation, commercial fishing, and mineral extraction (sand mining) are the primary activities that may spatially overlap with disposal at the modified ODMDS. The modified ODMDS avoids the National Oceanographic and Atmospheric Administration (NOAA) recommended vessel routes offshore Charleston, South Carolina, thereby avoiding conflict with commercial navigation.

Commercial fishing (shrimp trawling) occurs primarily to the west of the modified ODMDS. The likelihood of direct interference with these activities is low, provided there is close communication and coordination among users of the ocean resources. The EPA is not aware of any plans for desalination plants, or fish and shellfish culture operations near the modified ODMDS at this time. The modified ODMDS is not located in areas of special scientific importance.

(9) The existing water quality and ecology of the sites as determined by available data or trend assessment of baseline surveys (40 CFR 228.6(a)(9)).

Water quality of the existing site is typical of the Atlantic Ocean. Water and sediment quality analyses conducted in the study area and experience with past disposals in the Charleston ODMDS have not identified any adverse water quality impacts from ocean disposal of dredged material. The site supports benthic and epibenthic fauna characteristic of the South Atlantic Bight. Neither the pelagic (mobile) or benthic (non-mobile) communities should sustain irreparable harm due to their widespread occurrence off the South Carolina coast.

(10) Potentiality for the development or recruitment of nuisance species in the disposal site (40 CFR 228.6(a)(10)).

Nuisance species, considered as any undesirable organism not previously existing at a location, have not been observed at, or in the vicinity of, the modified ODMDS. They are either transported to or recruited to the site because the disposal of dredged material creates an environment where they can establish. Habitat conditions have changed somewhat at the Charleston ODMDS because of the disposal of some silty material on what was predominately sandy sediments. While it can be expected that organisms will become established at the site which were not there previously, this new community is not regarded as a nuisance, or "undesirable," community.

(11) Existence at or in close proximity to the site of any significant natural or cultural feature of historical importance (40 CFR 228.6(a)(11)).

No significant cultural features have been identified at, or in the vicinity of, the modified ODMDS at this time. Surveys conducted in 2012–2013 did not identify any cultural features of historical importance. The EPA has coordinated with South Carolina's State Historic Preservation Officer (SHPO) to identify any cultural features. The SHPO concurred with the EPA's determination that the modification of the ODMDS will have no effect on cultural resources listed, or eligible for listing on the National Register of Historic Places as no such resources exist in the project area.

F. Technical Amendment

The EPA corrected a clerical error that was included in the proposed language regarding the modified ODMDS coordinates. The second, third, and fourth latitude coordinates were incorrect in the proposed language but have been corrected to reflect the actual corner coordinates for the modified ODMDS.

III. Environmental Statutory Review—National Environmental Policy Act (NEPA); Magnuson-Stevens Act (MSA); Marine Mammal Protection Act (MMPA); Coastal Zone Management Act (CZMA); Endangered Species Act (ESA); National Historic Preservation Act (NHPA)

A. NEPA

Section 102 of the National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. 4321 to 4370f, requires Federal agencies to prepare an Environmental Impact Statement (EIS) for major federal actions significantly affecting the quality of the human environment. NEPA does not apply to EPA designations of ocean disposal sites under the MPRSA because the courts have exempted the EPA's actions under the MPRSA from the procedural requirements of NEPA through the functional equivalence doctrine. The EPA has, by policy, determined that the preparation of NEPA documents for certain EPA regulatory actions, including actions under the MPRSA, is appropriate. The EPA's "Notice of Policy and Procedures for Voluntary Preparation of NEPA Documents," (Voluntary NEPA Policy), 63 FR 58045, (October 29, 1998), sets out both the policy and procedures the EPA uses when preparing such environmental review documents. The EPA's primary voluntary NEPA document for expanding the ODMDS is the *Final Environmental Assessment for Modification of an Ocean Dredged Material Disposal Site Offshore Charleston, South Carolina, [June 2016]* (FEA), prepared by the EPA in cooperation with the USACE. Anyone desiring a copy of the FEA may obtain one from the addresses given above. A draft of this document was released for public review in December, 2015. The public comment period on the FEA closed on August 9, 2016. The FEA and its Appendices, which are part of the Docket for this action, provide the threshold environmental review for modification of the ODMDS. The information from the FEA is used above, in the discussion of the ocean dumping criteria.

B. MSA

The EPA integrated the essential fish habitat (EFH) assessment with the EA, pursuant to Section 305(b), 16 U.S.C. 1855(b)(2), of the Magnuson-Stevens Act, as amended (MSA), 16 U.S.C. 1801 to 1891d, and submitted that assessment to the National Marine Fisheries Service (NMFS) on December 4, 2015. The NMFS responded via letter that they have no comments on the proposed project.

C. CZMA

Pursuant to an Office of Water policy memorandum dated October 23, 1989, the EPA has evaluated the proposed site designations for consistency with the State of South Carolina's (the State) approved coastal management program. The EPA has determined that the designation of the modified site is consistent to the maximum extent practicable with the State coastal management program, and submitted this determination to the State for review in accordance with the EPA policy. The State conditionally concurred with this determination on February 17, 2016. The EPA has taken the State's comments into account in preparing the FEA for the site, in determining whether the site should be modified as proposed, and in determining whether restrictions or limitations should be placed on the use of the site, if it is designated.

D. ESA

The Endangered Species Act, as amended (ESA), 16 U.S.C. 1531 to 1544, requires Federal agencies to consult with NMFS and the U.S. Fish and Wildlife Service (USFWS) to ensure that any action authorized, funded, or carried out by the Federal agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of any critical habitat. The EPA incorporated a Biological Assessment (BA) into the EA to assess the potential effects of expanding the Charleston ODMDS on aquatic and wildlife species and submitted that document to the NMFS and USFWS on December 4, 2016. The EPA concluded that the proposed project would not adversely affect any threatened or endangered species, nor would it adversely modify any designated critical habitat. The USFWS concurred on the EPA's finding that the proposed action is not likely to adversely affect listed endangered or threatened species under the jurisdiction of the USFWS. The NMFS concluded the proposed action is not likely to adversely affect listed species under their jurisdiction.

E. NHPA

The USACE and the EPA initiated consultation with the State of South Carolina's Historic Preservation Officer (SHPO) on December 4, 2015, to address the National Historic Preservation Act, as amended (NHPA), 16 U.S.C. 470 to 470a-2, which requires Federal agencies to take into account the effect of their actions on districts, sites, buildings, structures, or objects, included in, or eligible for inclusion in the National Register of Historic Places (NRHP). In a letter dated January 6, 2016, the SHPO determined that no properties listed in or eligible for listing in the National Register of Historic Places will be affected by the project.

IV. Statutory and Executive Order Reviews

This rule modifies the designation of an ODMDS pursuant to Section 102 of the MPRSA. This action complies with applicable executive orders and statutory provisions as follows:

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This site modification does not require persons to obtain, maintain, retain, report, or publicly disclose information to or for a Federal agency.D

C. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) a small business defined by the Small Business Administration's size regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The EPA determined that this action will not have a significant economic impact on small entities because this rule will only have the effect of regulating the location of site to be used for the disposal of dredged material in ocean waters. After considering the economic impacts of this rule, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1531 to 1538, for State, local, or tribal governments or the private sector. This action imposes no new enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of the UMRA because it contains no regulatory requirements that might significantly or uniquely affect small government entities. Those entities are already subject to existing permitting requirements for the disposal of dredged material in ocean waters.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between the EPA and State and local governments, the EPA specifically solicited comments on this action from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 because the modification of the Charleston ODMDS will not have a direct effect on Indian Tribes, on the relationship between the federal government and Indian Tribes, or on the distribution of power and responsibilities between the federal government and Indian Tribes. Thus, Executive Order 13175 does not apply to this action. The EPA specifically solicited comments from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under Section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. The action concerns the modification of the Charleston ODMDS and only has the effect of providing a designated location for ocean disposal of dredged material pursuant to Section 102 (c) of the MPRSA.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355) because it is not a "significant regulatory action" as defined under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 12(d) (15 U.S.C. 272), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action includes environmental monitoring and measurement as described in EPA's SMMP. The EPA will not require the use of specific, prescribed analytic methods for monitoring and managing the designated ODMDS. The Agency plans to allow the use of any method, whether it constitutes a voluntary consensus standard or not, that meets the monitoring and measurement criteria discussed in the SMMP.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations

Executive Order 12898 (59 FR 7629) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. The EPA determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The EPA has assessed the overall protectiveness of modifying the Charleston ODMDS against the criteria established pursuant to the MPRSA to ensure that any adverse impact to the environment will be mitigated to the greatest extent practicable. We welcome comments on this action related to this Executive Order.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Authority: This action is issued under the authority of Section 102 of the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1401, 1411, 1412.

Dated: August 24, 2016.

V. Anne Heard,

Acting Regional Administrator, Region 4.

For the reasons set out in the preamble, the EPA amends chapter I, title 40 of the Code of Federal Regulations as follows:

PART 228—CRITERIA FOR THE MANAGEMENT OF DISPOSAL SITES FOR OCEAN DUMPING

■ 1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

■ 2. Section 228.15 is amended by revising paragraphs (h)(5)(i) through (iii) and (vi) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(h) * * *

(5) * * *

(i) *Location:* 32°36.280′ N., 79°43.662′ W.; 32°37.646′ N., 79°46.576′ W.; 32°39.943′ N., 79°45.068′ W.; 32°38.579′ N., 79°42.152′ W.

(ii) *Size:* Approximately 7.4 square nautical miles in size.

(iii) *Depth:* Ranges from approximately 30 to 45 feet (9 to 13.5 meters).

* * * * *

(vi) *Restrictions:* (A) Disposal shall be limited to dredged material from the Charleston, South Carolina, area;

(B) Disposal shall be limited to dredged material determined to be suitable for ocean disposal according to 40 CFR 227.13;

(C) Disposal shall be managed by the restrictions and requirements contained in the currently-approved Site Management and Monitoring Plan (SMMP);

(D) Monitoring, as specified in the SMMP, is required.

* * * * *

[FR Doc. 2016–21454 Filed 9–6–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 150908833–6738–02]

RIN 0648–BF37

Mariana Archipelago Fisheries; Remove the CNMI Medium and Large Vessel Bottomfish Prohibited Areas

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule removes the medium and large vessel bottomfish prohibited fishing areas in the Commonwealth of the Northern Mariana Islands (CNMI). Conditions in the fishery that led to establishing the prohibited areas are no longer present, and the restriction is no longer necessary. This rule also makes administrative housekeeping changes to the description of the CNMI management subarea and to the regulations for the CNMI management subarea crustacean fishing. The intent of this final rule is to improve the viability of the CNMI bottomfish fishery and promote optimum yield while preventing overfishing.

DATES: Effective October 7, 2016.

ADDRESSES: The Western Pacific Fishery Management Council (Council) and NMFS prepared Amendment 4 to the Fishery Ecosystem Plan for the Marianas Archipelago that provides background information on this final rule. Amendment 4, including a final environmental assessment and regulatory impact review, is identified as NOAA–NMFS–2015–0115 and is available from *www.regulations.gov* or the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, fax 808–522–8226, *www.wpcouncil.org.*

FOR FURTHER INFORMATION CONTACT: Sarah Ellgen, NMFS PIRO Sustainable Fisheries, 808–725–5173.

SUPPLEMENTARY INFORMATION: Federal regulations currently prohibit medium and large vessels (40 ft and greater) from commercial fishing for bottomfish management unit species in certain Federal waters around the CNMI. The prohibited areas include waters within approximately 50 nm of the Southern Islands (*i.e.,* Rota, Aguigan (alt. Aguijan), Tinian, Saipan, and Farallon de Medinilla) and within 10 nm of Alamagan Island. In 2008, the Council recommended, and NMFS implemented, the prohibited areas to prevent large bottomfish vessels based in Guam from traveling to CNMI fishing grounds. At the time, the Council was concerned that the Guam vessels could negatively affect fish stocks and local fisheries through stock depletion, catch competition, and gear conflicts. You may read more about the establishment of the prohibited areas in the 2008 proposed rule (73 FR 51992; September 8, 2008) and final rule (73 FR 75615; December 12, 2008).

The CNMI bottomfish fishery has changed since 2008, and the conditions that led the Council and NMFS to establish the prohibited areas are no longer present. Large vessels from Guam have not shown interest in fishing for CNMI bottomfish. The prohibited areas may also be negatively affecting the CNMI bottomfish fishery. Only a few small vessels have been operating on a regular basis, and the few medium and large vessels have faced declining participation, possibly resulting from higher fuel costs that prevent them from traveling beyond the prohibited areas. The prohibited areas may be contributing to the potential under-utilization of the bottomfish resource in CNMI, and removing them may promote optimum yield.

To address fishery conditions resulting from the CNMI prohibited areas, the Council recommended that NMFS remove them. The Council and NMFS will continue to manage the fishery under a suite of management requirements that include the specification of annual catch limits and accountability measures, post-season review of catches and effort, Federal permits, requirements for vessel markings, catch and sales reporting, and the vessel monitoring system. The fishing requirements for the Marianas Trench Marine National Monument also remain unchanged.

The Council and NMFS intend this final rule to improve the efficiency and economic viability of the CNMI bottomfish fishery. The Council and NMFS will annually review the effects of the action. Any future changes would be subject to additional environmental review and opportunity for public review and comment.

In addition to removing the prohibited areas, this final rule includes administrative housekeeping corrections to the description of the CNMI management subarea and to the CNMI permit area designation for crustacean fishing. First, prior to 2013, the CNMI management subarea was divided into an inshore area (the Exclusive Economic Zone, EEZ, within 3 nm of the shoreline) and an offshore area (the EEZ seaward of 3 nm from the shoreline). In 2013, under Public Law 113–34 (which amended Public Law 94–435) the United States transferred nearshore waters (0–3 nm) to the CNMI, so this distinction is no longer necessary. Second, the current regulations at § 665.442(a)(1) incorrectly refer to Permit Area 3, which is associated with American Samoa. The correct reference for the CNMI is Crustacean Permit Area 5, and this rule corrects that reference.

Comments and Responses

On June 13, 2016, NMFS published a proposed rule and request for public comments (81 FR 38123). The comment period ended on July 28, 2016. NMFS did not receive any comments.

Changes From the Proposed Rule

There are no changes from the proposed rule.

Classification

The Regional Administrator, Pacific Islands Region, NMFS, determined that Amendment 4 is necessary for the conservation and management of the bottomfish fisheries of the Marianas Archipelago, and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. NMFS published the factual basis for the certification in the proposed rule (81 FR 38123, June 13, 2016), and does not repeat it here. NMFS received no comments on this certification. However, NMFS has updated its analysis under a new small business size standard of $11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411). This new size standard was established after the proposed rule was published.

On December 29, 2015, NMFS issued a final rule establishing the $11 million standard. This standard is for Regulatory Flexibility Act (RFA) compliance purposes only (80 FR 81194) and became effective on July 1, 2016, to be used in place of the U.S. Small Business Administration (SBA) current standards of $20.5 million, $5.5 million, and $7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules that are subject to the RFA after July 1, 2016.

Pursuant to the Regulatory Flexibility Act, and prior to July 1, 2016, a certification was developed for this regulatory action using the former SBA size standards. NMFS has reviewed the analyses prepared for this regulatory action in light of the new size standard. All of the entities directly regulated by this regulatory action are finfish commercial fishing businesses and were considered small under the SBA size standards, and they all would continue to be considered small under the new standard. Thus, NMFS has determined that the new size standard does not affect analyses prepared for this regulatory action and the factual basis for the certification submitted during the proposed rule stage stands. As a result, a regulatory flexibility analysis is not required, and none was prepared

This final rule has been determined to be not significant for purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 665

Administrative practice and procedure, Commonwealth of the Northern Mariana Islands, Mariana Archipelago fisheries, Fisheries, Fishing, Guam, Permits, Reporting and recordkeeping requirements.

Dated: August 31, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 665 as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

■ 1. The authority citation for 50 CFR part 665 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 665.402, revise paragraphs (b) and (c) to read as follows:

§ 665.402 Management subareas.

* * * * *

(b) *CNMI Management Subarea* means the EEZ seaward of the CNMI, with the inner boundary defined as a line coterminous with the seaward boundary of the CNMI.

(c) The outer boundary of each fishery management area is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured, or is coterminous with adjacent international maritime boundaries. The boundary between the fishery management areas of Guam and the CNMI extends to those points that are equidistant between Guam and the island of Rota in the CNMI. CNMI and Guam management subareas are divided by a line intersecting these two points: 148° E. long., 12° N. lat., and 142° E. long., 16° N. lat.

§ 665.403 [Amended]

■ 3. In § 665.403, remove and reserve paragraph (b).

■ 4. In § 665.405, revise paragraphs (e) and (f) and remove paragraphs (g) and (h).

The revisions read as follows:

§ 665.405 Prohibitions.

* * * * *

(e) Use a vessel to fish commercially for Mariana bottomfish MUS in the CNMI management subarea without a valid CNMI commercial bottomfish permit registered for use with that vessel, in violation of § 665.404(a)(2).

(f) Falsify or fail to make, keep, maintain, or submit a Federal logbook as required under § 665.14(b) when using a vessel to engage in commercial fishing for Mariana bottomfish MUS in the CNMI management subarea in violation of § 665.14(b).

■ 6. In § 665.442, revise paragraph (a)(1) to read as follows:

§ 665.442 Permits.

(a) * * *

(1) The owner of any vessel used to fish for lobster in Crustacean Permit Area 5 must have a permit issued for such a vessel.

* * * * *

[FR Doc. 2016–21422 Filed 9–6–16; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 173
Wednesday, September 7, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

COUNCIL OF THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY

5 CFR Part 9801

RIN 3219–AA00

Privacy Act Regulations

AGENCY: Council of the Inspectors General on Integrity and Efficiency.

ACTION: Proposed rule.

SUMMARY: The Council of the Inspectors General on Integrity and Efficiency (CIGIE) is issuing this proposed rule to establish its procedures relating to access, maintenance, disclosure, and amendment of records that are in a CIGIE system of records under the Privacy Act of 1974 (Privacy Act). The proposed rule also establishes rules of conduct for CIGIE personnel who have responsibilities under the Privacy Act.

DATES: Submit comments on or before November 7, 2016.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: comments@cigie.gov.*
- *Fax:* (202) 254–0162.
- *Mail:* Atticus J. Reaser, General Counsel, Council of the Inspectors General on Integrity and Efficiency, 1717 H Street NW., Suite 825, Washington, DC 20006.
- *Hand Delivery/Courier:* Council of the Inspectors General on Integrity and Efficiency, 1717 H Street NW., Suite 825, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Atticus J. Reaser, General Counsel, CIGIE, (202) 292–2600.

SUPPLEMENTARY INFORMATION:

Background Information

CIGIE is issuing this proposed rule to provide the procedures and guidelines under which CIGIE will implement the Privacy Act.

In 2008, Congress established CIGIE as an independent entity within the executive branch in order to address integrity, economy, and effectiveness issues that transcend individual Government agencies; and increase the professionalism and effectiveness of personnel by developing policies, standards, and approaches to aid in the establishment of a well-trained and highly skilled workforce in the offices of the Inspectors General (OIG). CIGIE's membership is comprised of all Inspectors General whose offices are established under section 2 or section 8G of the Inspector General Act of 1978, Public Law 95–452, 92 Stat. 1101 (codified as amended at 5 U.S.C. app) (Inspector General Act) (*i.e.,* those Inspectors General that are Presidentially-appointed/Senate-confirmed and those that are appointed by agency heads) as well as the Controller of the Office of Federal Financial Management, a designated official of the Federal Bureau of Investigation (FBI), the Director of the Office of Government Ethics, the Special Counsel of the Office of Special Counsel, the Deputy Director of the Office of Personnel Management, the Deputy Director for Management of the Office of Management and Budget (OMB), and the Inspectors General for the Intelligence Community, Central Intelligence Agency, Library of Congress, Capitol Police, Government Publishing Office, Government Accountability Office, and Architect of the Capitol. The Deputy Director for Management of OMB serves as the Executive Chairperson of CIGIE.

Section 11(d) of the Inspector General Act mandates that CIGIE have an Integrity Committee (IC), which shall receive, review, and refer for investigation allegations of wrongdoing that are made against Inspectors General and designated staff members of the various OIGs. Pursuant to section 11(d)(2)(A) of the Inspector General Act, all records received or created by the IC in fulfilling its responsibilities are collected and maintained separately as IC records by the official of the FBI serving on the IC. As of the issuance of this proposed rule, all such records are maintained in FBI's Central Records System and are subject to the system of records notices and the Privacy Act policies and regulations applicable to that system. See 28 CFR part 16, subpart D. Accordingly, unless otherwise specifically stated, the regulations published below do not apply to records maintained by the IC.

Executive Orders 12866 and 13563

In promulgating this rule, CIGIE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. The Office of Management and Budget has determined that this rule is not "significant" under Executive Order 12866.

Regulatory Flexibility Act

These proposed regulations will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided by the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed regulations impose no additional reporting and recordkeeping requirements. Therefore, clearance by OMB is not required.

Federalism (Executive Order 13132)

This rule does not have Federalism implications, as set forth in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 5 CFR Part 9801

Information, Privacy, Privacy Act, Records.

■ For the reasons set forth in the preamble, CIGIE proposes to add part 9801 to title 5 of the Code of Federal Regulations as follows:

PART 9801—PRIVACY ACT REGULATIONS

Subpart A—General Provisions

Sec.
9801.101 Purpose and scope.
9801.102 CIGIE organization.
9801.103 Definitions.
9801.104 Rules for determining if an individual is the subject of a record.
9801.105 Employee standards of conduct.
9801.106 Use and collection of social security numbers.
9801.107 Other rights and services.

Subpart B—Access to Records and Accounting of Disclosures

Sec.
9801.201 Requests for access.
9801.202 Response to requests.
9801.203 Granting access.
9801.204 Special procedures: Medical records.
9801.205 Appeals from denials of requests for access to records.
9801.206 Response to appeal of a denial of access.
9801.207 Fees.
9801.208 Requests for accounting of record disclosures.

Subpart C—Amendment of Records

Sec.
9801.301 Requests for amendment of record.
9801.302 Response to requests.
9801.303 Appeal from adverse determination on amendment.
9801.304 Response to appeal of adverse determination on amendment; disagreement statements.
9801.305 Assistance in preparing request to amend a record or to appeal an initial adverse determination.

Authority: Section 11 of the Inspector General Act of 1978, Pub. L. 95–452, 92 Stat. 1101 (codified as amended at 5 U.S.C. app); 5 U.S.C. 301, 552a; 31 U.S.C. 9701.

Subpart A—General Provisions

§ 9801.101 Purpose and scope.

This part contains the regulations of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) implementing the Privacy Act of 1974, 5 U.S.C. 552a. This part sets forth the basic responsibilities of CIGIE with regard to CIGIE's compliance with the requirements of the Privacy Act and offers guidance to members of the public who wish to exercise any of the rights established by the Privacy Act with regard to records maintained by CIGIE. These regulations should be read in conjunction with the Privacy Act, which explains in more detail individuals' rights.

§ 9801.102 CIGIE organization.

(a) *Centralized program.* Except as stated in paragraph (b) of this section, CIGIE has a centralized Privacy Act program, with one office receiving and coordinating the processing of all Privacy Act requests to CIGIE.

(b) *Integrity Committee records.* The Integrity Committee of CIGIE (IC) is the single exception to CIGIE's centralized Privacy Act program. By statute, all records received or created by the IC in fulfilling its responsibilities are collected and maintained separately as IC records by the official of the Federal Bureau of Investigation (FBI) serving on the IC. Currently, all such records are maintained by the FBI in the FBI's Central Records System and are subject to the system of records notices and the Privacy Act policies and regulations applicable to that system. See 28 CFR part 16, subpart D. Accordingly, except as stated in paragraph (c) of this section, because IC records are not maintained by CIGIE, this part does not apply to requests or appeals regarding IC records.

(c) *Acceptance of requests and appeals.* CIGIE will accept initial requests or appeals regarding CIGIE records and regarding IC records maintained by the FBI on behalf of the FBI. Requests and appeals regarding IC records will be referred to the FBI for processing and direct response to the requester by the FBI.

§ 9801.103 Definitions.

(a) For purposes of this part the terms *individual, maintain, record, routine use,* and *system of records,* shall have the meanings set forth in 5 U.S.C. 552a(a).

(b) *CIGIE* means the Council of the Inspectors General on Integrity and Efficiency and includes its predecessor entities, the Executive Council on Integrity and Efficiency and the President's Council on Integrity and Efficiency.

(c) *Days,* unless stated as "calendar days," are working days and do not include Saturdays, Sundays, or Federal holidays.

(d) *IC* means the CIGIE Integrity Committee established under section 11(d) of the Inspector General Act of 1978, Public Law 95–452, 92 Stat. 1101 (codified as amended at 5 U.S.C. app) (Inspector General Act).

(e) *Request for access* to a record means a request made under Privacy Act subsection (d)(1).

(f) *Request for amendment* of a record means a request made under Privacy Act subsection (d)(2).

(g) *Request for an accounting* means a request made under Privacy Act subsection (c)(3).

(h) *Requester* means an individual who makes a request for access, a request for amendment, or a request for an accounting under the Privacy Act.

§ 9801.104 Rules for determining if an individual is the subject of a record.

An individual seeking to determine if a specific CIGIE system of records contains a record pertaining to the individual must follow the procedures set forth for access to records in § 9801.201(a), (b)(1) and (2), (c), and (d). A request to determine if an individual is the subject of a record will ordinarily be responded to within 10 days, except when CIGIE determines otherwise, in which case the request will be acknowledged within 10 days and the individual will be informed of the reasons for the delay and an estimated date by which a response will be issued.

§ 9801.105 Employee standards of conduct.

CIGIE will inform its employees involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, of the provisions of the Privacy Act, including the Act's civil liability and criminal penalty provisions. Unless otherwise permitted by law, an employee of CIGIE shall:

(a) Collect from individuals only the information that is relevant and necessary to discharge the responsibilities of CIGIE;

(b) Collect information about an individual directly from that individual whenever practicable when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

(c) Inform each individual from whom information is collected of:

(1) The legal authority to collect the information and whether providing it is mandatory or voluntary;

(2) The principal purpose for which CIGIE intends to use the information;

(3) The routine uses CIGIE may make of the information; and

(4) The effects on the individual, if any, of not providing the information;

(d) Maintain no system of record without public notice and notify appropriate CIGIE officials of the existence or development of any system of records that is not the subject of a current or planned public notice;

(e) Maintain all records that are used by CIGIE in making any determination about an individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in the determination;

(f) Except as to disclosures made to an agency or made under the Freedom of Information Act, 5 U.S.C. 552 (FOIA), make reasonable efforts, prior to disseminating any record about an individual, to ensure that the record is accurate, relevant, timely, and complete;

(g) Maintain no record describing how an individual exercises his or her First Amendment rights, unless it is expressly authorized by statute or by the individual about whom the record is maintained, or is pertinent to and within the scope of an authorized law enforcement activity;

(h) When required by the Privacy Act, maintain an accounting in the specified form of all disclosures of records by

CIGIE to persons, organizations, or agencies;

(i) Maintain and use records with care to prevent the unauthorized or inadvertent disclosure of a record to anyone. No record contained in a CIGIE system of record shall be disclosed to another person, or to another agency outside CIGIE, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless the disclosure is otherwise authorized by the Privacy Act; and

(j) Notify the appropriate CIGIE official of any record that contains information that the Privacy Act does not permit CIGIE to maintain.

§ 9801.106 Use and collection of social security numbers.

(a) *No denial of right, benefit, or privilege.* Individuals may not be denied any right, benefit, or privilege as a result of refusing to provide their social security numbers, unless the collection is required by Federal statute; and

(b) *Notification to individual.* Individuals requested to provide their social security numbers must be informed of:

(1) Whether providing social security numbers is mandatory or voluntary;

(2) The statutory or regulatory authority that authorizes the collection of social security numbers; and

(3) The uses that will be made of the numbers.

§ 9801.107 Other rights and services.

Nothing in this part shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the Privacy Act.

Subpart B—Access to Records and Accounting of Disclosures

§ 9801.201 Requests for access.

(a) *How addressed.* A requester seeking access to records pertaining to the requester in a CIGIE system of records should submit a written request that includes the words "Privacy Act Request" on both the envelope and at the top of the request letter to the Executive Director, Council of the Inspectors General on Integrity and Efficiency, 1717 H Street NW., Suite 825, Washington, DC 20006.

(b) *Description of records sought.* (1) A request should contain a specific reference to the CIGIE system of records from which access to the records is sought. Notices of CIGIE systems of records subject to the Privacy Act are published in the **Federal Register**, and copies of the notices are available on CIGIE's Web site at *www.ignet.gov,* or upon request from CIGIE's Office of General Counsel.

(2) If the written inquiry does not refer to a specific system of records, it must describe the records that are sought in enough detail to enable CIGIE personnel to locate the system of records containing them with a reasonable amount of effort.

(3) The request should state whether the requester wants a copy of the record or wants to examine the record in person.

(c) *Verification of identity.* A requester seeking access to records pertaining to the requester must verify their identity in their request. The request must state the requester's full name, current address, and date and place of birth. The requester must sign the request and the signature must either be notarized or state, "Under penalty of perjury, I hereby declare that I am the person named above and I understand that any falsification of this statement is punishable under the provisions of Title 18, United States Code (U.S.C.), Section 1001 by a fine of not more than $10,000 or by imprisonment of not more than five years, or both; and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of Title 5, U.S.C., Section 552a(i)(3) as a misdemeanor and by a fine of not more than $5,000." In order to help the identification and location of requested records, the requester may optionally include their social security number. No identification shall be required if the records are required by 5 U.S.C. 552 to be released.

(d) *Verification of guardianship.* When making a request as the parent or guardian of a minor or as the guardian of someone determined by a court to be incompetent for access to records about that individual, the requester must establish:

(1) The identity of the individual who is the subject of the record, by stating the name, current address, date and place of birth, and, at the requester's option, the social security number of the individual;

(2) The requester's identity, as required in paragraph (c) of this section;

(3) That the requester is the parent or guardian of that individual, which may be established by providing a copy of the individual's birth certificate showing the requester's parentage or by providing a court order establishing the requester's guardianship; and

(4) That the requester is acting on behalf of that individual in making the request.

§ 9801.202 Response to requests.

A request for access will ordinarily be responded to within 10 days, except when CIGIE determines otherwise, in which case the request will be acknowledged within 10 days and the requester will be informed of the reasons for the delay and an estimated date by which a response will be issued. A response to a request for access should include the following:

(a) A statement that there is a record or records as requested or a statement that there is not a record in the system of records;

(b) The method of access (if a copy of all the records requested is not provided with the response);

(c) The amount of any fees to be charged for copies of records under § 9801.207, if applicable;

(d) The name and title of the official responsible for the response; and

(e) If the request is denied in whole or in part, or no record is found in the system, a statement of the reasons for the denial, or a statement that no record has been found, and notice of the procedures for appealing the denial or no record finding.

§ 9801.203 Granting access.

(a) *Means of access.* (1) The methods for allowing access to records, when such access has been granted by CIGIE, are:

(i) Examination in person in a designated office during the hours specified by CIGIE; or

(ii) Providing copies of the records.

(2) When a requester has not indicated whether he wants a copy of the record or wants to examine the record in person, CIGIE may choose the means of granting access. However, the means chosen should not unduly impede the requester's right of access. A requester may elect to receive a copy of the records after having examined them.

(b) *Accompanying individual.* If the requester is granted in person access to examine the records, the requester may be accompanied by another individual of the requester's choice during the course of the examination of the records. CIGIE may require the requester to submit a signed statement authorizing the accompanying individual's access to the records.

(c) *Certified copies.* CIGIE will not furnish certified copies of records. When copies are to be furnished, they may be provided as determined by CIGIE.

(d) *Original records.* When the requester seeks to obtain original documentation, CIGIE reserves the right to limit the request to copies of the original records.

§ 9801.204 Special procedures: Medical records.

In the event CIGIE receives a request pursuant to § 9801.201 for access to medical records (including psychological records) whose disclosure CIGIE determines would be harmful to the individual to whom they relate, it may refuse to disclose the records directly to the requester but shall transmit them to a physician designated by the requester.

§ 9801.205 Appeals from denials of requests for access to records.

(a) *How addressed.* A requester may submit a written appeal of the decision by CIGIE to deny an initial request for access to records or a no record response to the Chairperson, Council of the Inspectors General on Integrity and Efficiency, 1717 H Street NW., Suite 825, Washington, DC 20006. The words "Privacy Act Appeal" should be included on the envelope and at the top of the letter of appeal.

(b) *Deadline and content.* The appeal must be received by CIGIE within 60 days of the date of the letter denying the access request or reflecting the no record finding and should contain a brief description of the records involved or copies of the relevant correspondence from CIGIE. The appeal should attempt to refute the reasons given by CIGIE in support of its decision to deny the initial request for access or no record finding.

§ 9801.206 Response to appeal of a denial of access.

(a) *Access granted.* If the Chairperson or the Chairperson's designee determines that access to the records should be granted, the response will state how access will be provided if the records are not included with the response.

(b) *Denial affirmed.* Any decision that either partially or fully affirms the initial decision to deny access or no record finding shall inform the requester of the right to seek judicial review of the decision in accordance with the Privacy Act (5 U.S.C. 552a(g)).

(c) *When appeal is required.* If a requester wishes to seek review by a court of any adverse determination or denial of a request, the requester must first appeal it under § 9801.205.

§ 9801.207 Fees.

(a) *No fees for most services.* Services for which fees will not be charged:

(1) The search and review time expended by CIGIE to produce a record;

(2) The first copy of the records provided; and

(3) CIGIE making the records available to be personally reviewed by the requester.

(b) *Fees for additional copies.* When a requester requests additional copies of records, CIGIE will assess the requester a fee of $.20 per page. CIGIE will bill requester in arrears for such fees, except as follows:

(1) If the total fee for additional copies amounts to more than $25.00, the requester will be notified of the fee amount. Except as specified in paragraph (b)(2) of this section, upon requester's written agreement to pay the assessed fees, CIGIE will provide the additional copies without prepayment of such fees (*i.e.,* payment will be accepted in arrears).

(2) An advance payment before additional copies of the records are made will be required if:

(i) CIGIE determines that the total fee to be assessed under this section exceeds $250.00. When such a determination is made, the requester will be notified of the determination and will be required to submit an advance payment of an amount up to the total fee. The amount of the advanced payment will be at the sole discretion of CIGIE and will be based, in part, on whether requester has a history of prompt payment of Privacy Act fees. If the required advanced payment is an amount less than the total fee, requester will be required to submit a written agreement to pay any fees not paid in advance; or

(ii) The requester has previously failed to pay a previously assessed Privacy Act fee in a timely fashion (*i.e.,* within 30 days of the date of the billing). In such cases, the requester will be required to pay the full amount outstanding plus any applicable interest as provided by paragraph (c) of this section and to make an advance payment of the full amount of the determined fee before CIGIE begins to process a new request for additional copies.

(c) *Interest charges.* For additional copies provided to requester that result in fees assessed, CIGIE will begin levying interest charges on an unpaid balance starting on the 31st day following the day on which the billing was sent. Interest will be assessed at the rate prescribed under 31 U.S.C. 3717 and will accrue from the date of the billing.

(d) *Payment address.* Payment of fees should be made by either a personal check, bank draft or a money order that is payable to the Department of the Treasury of the United States and mailed or delivered to: Privacy Officer, Council of the Inspectors General on Integrity and Efficiency, 1717 H Street NW., Suite 825, Washington, DC 20006.

§ 9801.208 Requests for accounting of record disclosures.

(a) *How made and addressed.* Except where accountings of disclosures are not required to be kept (as stated in paragraph (b) of this section), a requester may request an accounting of any disclosure that has been made by CIGIE to another person, organization, or agency of any record about the requester. This accounting contains the date, nature, and purpose of each disclosure, as well as the name and address of the person, organization, or agency to which the disclosure was made. A requester seeking an accounting of record disclosures must follow the procedures set forth for access to records in § 9801.201(a), (b)(1) and (2), (c), and (d).

(b) *Where accountings are not required.* CIGIE is not required to provide accountings to requesters where they relate to:

(1) Disclosures for which accountings are not required to be kept, including disclosures that are made to officers and employees of CIGIE and disclosures that are made under the FOIA. For purposes of this part, officers and employees of CIGIE includes, in part, CIGIE's membership, as addressed in section 11 of the Inspector General Act, when such members are acting in their capacity as CIGIE members;

(2) Disclosures made to law enforcement agencies for authorized law enforcement activities in response to written requests from those law enforcement agencies specifying the law enforcement activities for which the disclosures are sought; or

(3) Disclosures made from law enforcement systems of records that have been exempted from accounting requirements.

Subpart C—Amendment of Records

§ 9801.301 Requests for amendment of record.

(a) *How addressed.* A requester seeking to amend a record or records pertaining to requester in a CIGIE system of records should submit a written request that includes the words "Privacy Act Amendment Request" on both the envelope and at the top of the request letter to the Executive Director, Council of the Inspectors General on Integrity and Efficiency, 1717 H Street NW., Suite 825, Washington, DC 20006. Records not subject to the Privacy Act will not be amended in accordance with these provisions.

(b) *Contents of request.* A request to amend a record in a CIGIE system of records must include:

(1) The name of the system of records and a brief description of the record proposed for amendment. In the event the request to amend the record is the result of the requester having gained access to the record in accordance with the provisions concerning access to records as set forth in subpart B of this part, copies of previous correspondence between the requester and CIGIE will serve in lieu of a separate description of the record.

(2) The exact portion of the record the requester seeks to have amended should be indicated clearly. If possible, proposed alternative language should be set forth, or, at a minimum, the reasons why the requester believes the record is not accurate, relevant, timely, or complete should be set forth with enough particularity to permit CIGIE to not only to understand the requester's basis for the request, but also to make an appropriate amendment to the record.

(c) *Burden of proof.* The requester has the burden of proof when seeking the amendment of a record. The requester must furnish sufficient facts to persuade the appropriate system manager of the inaccuracy, irrelevance, untimeliness, or incompleteness of the record.

(d) *Identification requirement.* When the requester's identity has been previously verified pursuant to § 9801.201, further verification of identity is not required as long as the communication does not suggest a need for verification. If the requester's identity has not been previously verified, the appropriate system manager may require identification validation as described in § 9801.201.

§ 9801.302 Response to requests.

(a) *Time limit for acknowledging a request for amendment.* To the extent possible, CIGIE will acknowledge receipt of a request to amend a record or records within 10 working days.

(b) *Determination on an amendment request.* The decision of CIGIE in response to a request for amendment of a record in a system of records may grant in whole or deny any part of the request to amend the record.

(1) If CIGIE grants the request, the appropriate system manager will amend the record(s) and provide a copy of the amended record(s) to the requester. To the extent an accounting of disclosure has been maintained, the system manager shall advise all previous recipients of the record that an amendment has been made and give the substance of the amendment. Where practicable, the system manager shall send a copy of the amended record to previous recipients.

(2) If CIGIE denies the request in whole or in part, the reasons for the denial will be stated in the response letter. In addition, the response letter will state:

(i) The name and address of the official with whom an appeal of the denial may be lodged; and

(ii) A description of any other procedures which may be required of the requester in order to process the appeal.

§ 9801.303 Appeal from adverse determination on amendment.

(a) *How addressed.* A requester may submit a written appeal of the decision by CIGIE to deny an initial request to amend a record in a CIGIE system of records to the Chairperson, Council of the Inspectors General on Integrity and Efficiency, 1717 H Street NW., Suite 825, Washington, DC 20006. The words "Privacy Act Appeal" should be included on the envelope and at the top of the letter of appeal.

(b) *Deadline and content.* The appeal must be received by CIGIE within 60 days of the date of the letter denying the request and should contain a brief description of the record(s) involved or copies of the correspondence from CIGIE and the reasons why the requester believes that the disputed information should be amended.

§ 9801.304 Response to appeal of adverse determination on amendment; disagreement statements.

(a) *Response timing.* The Chairperson should make a final determination in writing not later than 30 days from the date the appeal was received. The 30-day period may be extended for good cause. Notice of the extension and the reasons therefor will be sent to the requester within the 30-day period.

(b) *Amendment granted.* If the Chairperson determines that the record(s) should be amended in accordance with the requester's request, the Chairperson will take the necessary steps to advise the requester and to direct the appropriate system manager:

(1) To amend the record(s); and

(2) To notify previous recipients of the record(s) for which there is an accounting of disclosure that the record(s) have been amended.

(c) *Denial affirmed.* If the appeal decision does not grant in full the request for amendment, the decision letter will notify the requester that the requester may:

(1) Obtain judicial review of the decision in accordance with the terms of the Privacy Act at 5 U.S.C. 552a(g); and

(2) File a statement setting forth their reasons for disagreeing with the decision.

(d) *Requester's disagreement statement.* A requester's disagreement statement must be concise. CIGIE has the authority to determine the "conciseness" of the statement, taking into account the scope of the disagreement and the complexity of the issues.

(e) *Provision of requester's disagreement statement.* In any disclosure of information about which an individual has filed a proper statement of disagreement, CIGIE will clearly note any disputed portion(s) of the record(s) and will provide a copy of the statement to persons or other agencies to whom the disputed record or records has been disclosed and for whom an accounting of disclosure has been maintained. A concise statement of the reasons for not making the amendments requested may also be provided.

§ 9801.305 Assistance in preparing request to amend a record or to appeal an initial adverse determination.

Requesters may seek assistance in preparing a request to amend a record or an appeal of an initial adverse determination, or to learn further of the provisions for judicial review, by contacting CIGIE's Privacy Officer by email at *privacy@cigie.gov* or by mail at Privacy Officer, Council of the Inspectors General on Integrity and Efficiency, 1717 H Street NW., Suite 825, Washington, DC 20006.

Dated: August 31, 2016.

Michael E. Horowitz,

Chairperson of the Council of the Inspectors General on Integrity and Efficiency.

[FR Doc. 2016–21473 Filed 9–6–16; 8:45 am]

BILLING CODE 6820–C9–P

FEDERAL TRADE COMMISSION

16 CFR Part 314

RIN 3084–AB35

Standards for Safeguarding Customer Information

AGENCY: Federal Trade Commission.

ACTION: Request for public comment.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") requests public comment on its Standards for Safeguarding Customer Information ("Safeguards Rule" or "Rule"). The Commission is soliciting comment as part of the FTC's systematic review of all current Commission regulations and guides.

DATES: Comments must be received on or before November 7, 2016.

ADDRESSES: Interested parties may file a comment online or on paper by following the Instructions for Submitting Comments part of the **SUPPLEMENTARY INFORMATION** section below. Write "Safeguards Rule, 16 CFR 314, Project No. P145407," on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/safeguardsrulenprm* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex B), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: David Lincicum or Katherine McCarron, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580, (202) 326–2773 or (202) 326–2333.

SUPPLEMENTARY INFORMATION:

I. Background

The Gramm-Leach-Bliley Act ("G-L-B Act" or "Act") was enacted in 1999 to reform and modernize the banking industry by eliminating existing barriers between banking and commerce. The Act permits banks to engage in a broad range of activities, including insurance and securities brokering, with new affiliated entities. Subtitle A of Title V of the Act, captioned "Disclosure of Nonpublic Personal Information," limits the instances in which a financial institution may disclose nonpublic personal information about a consumer to nonaffiliated third parties, and requires a financial institution to disclose certain information sharing practices. In 2000, the Commission issued a final rule that implemented Subtitle A as it relates to these requirements (hereinafter "Privacy Rule").

Subtitle A of Title V also required the Commission and other federal agencies to establish standards for financial institutions relating to administrative, technical, and physical safeguards for certain information. *See* 15 U.S.C. secs. 6801(b), 6805(b)(2).

Pursuant to the Act's directive, the Commission promulgated the Safeguards Rule in 2002. The Safeguards Rule applies to all "financial institutions" over which the Commission has jurisdiction. The Safeguards Rule uses the definition of "financial institution" from the Privacy Rule.[1] The Privacy Rule defines "financial institution" as "any institution the business of which is engaging in financial activities as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)). An institution significantly engaged in financial activities is a financial institution."[2] The term "financial activities" includes not only a number of traditional financial activities specified in 12 U.S.C. 1843(k), but also those activities found by the Federal Reserve Board ("the Fed") to be closely related to banking by regulation "in effect on the date of the enactment" of the G-L-B Act.[3]

When promulgating the Privacy Rule, the Commission determined to include as "financial activities" only those activities that the Fed found to be "financial in nature," and not to include those activities that the Fed found to be "incidental" or "complementary" to financial activities.[4] Other agencies included "incidental" activities when promulgating their rules. In addition, the Commission decided that activities that were determined to be financial in nature after the enactment of the G-L-B Act would not be automatically included in its Privacy Rule; rather, the Commission would have to take additional action to include them. The effect of these two decisions was to limit the activities covered by the Commission's rules to those set out in 12 CFR 225.28 as it existed in 1999. As indicated below, the Commission seeks comment on whether the Safeguards Rule should be amended to include either (1) "incidental" activities, or (2) activities determined after 1999 to be financial in nature or "incidental" to financial activities.

The Safeguards Rule applies to the handling of "customer information" by financial institutions. "Customer information" is defined as "any record containing nonpublic personal information . . . about a customer of a financial institution, whether in paper, electronic, or other form" that is "handled or maintained by or on behalf of" a financial institution or its affiliates.[5] The Rule does not apply to all *consumer* information handled by a financial institution; it applies only to the information of *customers,* which are consumers that have a continuing relationship with a financial institution that provides one or more financial products or services to be used primarily for personal, family, or household purposes.[6] The Rule is not limited to protecting a financial institution's own customers, but also applies to all customer information in the financial institution's possession, including information about the customers of other financial institutions.[7]

The Safeguards Rule requires financial institutions to develop, implement, and maintain a comprehensive information security program.[8] An information security program consists of the administrative, technical, or physical safeguards the financial institution uses to access, collect, distribute, process, protect, store, use, transmit, dispose of, or otherwise handle customer information.[9] The information security program must be written in one or more readily accessible parts and contain administrative, technical, and physical safeguards.[10] The safeguards must be appropriate to the size and complexity of the financial institution, the nature and scope of its activities, and the sensitivity of any customer information at issue.[11] The safeguards must also be reasonably designed to insure the security and confidentiality of customer information, protect against any anticipated threats or hazards to the security or integrity of the information, and protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any customer.[12]

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[1] 16 CFR 314.2(a) (terms in the Safeguards Rule have the same meanings as set forth in the Commission's Privacy Rule). Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, 124 Stat. 1376 (2010)), the majority of the Commission's rulemaking authority for the Privacy Rule was transferred to the Consumer Financial Protection Bureau (CFPB), with the exception of rulemaking authority pertaining to certain motor vehicle dealers (15 U.S.C. 6804(a)(1)(C)). Accordingly, the Commission's Privacy Rule applies only to certain motor vehicle dealers, while the CFPB's Privacy Rule (12 CFR part 1016) applies to all other entities under the Commission's jurisdiction as well as other financial institutions for which the CFPB has rulemaking authority. The FTC continues to enforce the CFPB Privacy Rule with respect to all entities within the FTC's jurisdiction. Under the Dodd-Frank Act, the Commission retained rulemaking authority for the Safeguards Rule (15 U.S.C. 6804(a)(1)(A)). Thus, for purposes of the Safeguards Rule, the definition of "financial institution" in the Commission's Privacy Rule applies to all entities within the Commission's jurisdiction. Other agencies also continue to have rules or guidelines implementing the G-L-B safeguards requirements for entities within their jurisdiction. *See* 12 CFR part 30, app. B (Office of the Comptroller of the Currency); 12 CFR part 208, app. D–2 and 12 CFR part 225, app. F (Board of Governors of the Federal Reserve System); 12 CFR part 364, app. B (Federal Deposit Insurance Corporation); 12 CFR part 748, app. A (National Credit Union Administration); 17 CFR 248.30 (Securities and Exchange Commission).

[2] 16 CFR 313.3(k)(1) (definition of "financial institution" in the Privacy Rule).

[3] 65 FR 33,646, 33,647 (May 24, 2000) (discussing scope of Privacy Rule); *see also id.* at 33,654–55 (discussing definition of "financial institution").

[4] *Id.* at 33,654.

[5] 16 CFR 314.2(b). "Nonpublic personal information" is defined as personally identifiable financial information and any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available. 16 CFR 313.3(n)(1). The Safeguards Rule uses the definition of "nonpublic personal information" from the Privacy Rule. 16 CFR

[6] 16 CFR 313.3(h), (i). The Safeguards Rule uses the definitions of "customer" and "customer relationship" from the Privacy Rule. 16 CFR 314.2(a).

[7] 16 CFR 314.1(b).

[8] 16 CFR 314.3(a).

In order to develop, implement, and maintain its information security program, a financial institution must identify reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information that could result in the unauthorized disclosure, misuse, alteration, destruction, or other compromise of such information, including in the areas of: (1) Employee training and management; (2) information systems, including network and software design, as well as information processing, storage, transmission, and disposal; and (3) detecting, preventing, and responding to attacks, intrusions, or other systems failures.[13] The financial institution must then design and implement information safeguards to control the risks identified through the risk assessment, and regularly test or otherwise monitor the effectiveness of the safeguards' key controls, systems, and procedures.[14] The financial institution is also required to evaluate and adjust its information security program in light of the results of this testing and monitoring, as well as any material changes in its operations or business arrangements, or any other circumstances that it knows or has reason to know may have a material impact on its information security program.[15] The financial institution must also designate an employee or employees to coordinate the information security program.[16]

The Safeguards Rule also requires financial institutions to take reasonable steps to select and retain service providers that are capable of maintaining appropriate safeguards for customer information and require those service providers by contract to implement and maintain such safeguards.[17]

The Safeguards Rule became effective on May 23, 2003.

II. Regulatory Review of the Safeguards Rule

The Commission periodically reviews all of its rules and guides. These reviews seek information about the costs and benefits of the agency's rules and guides, and their regulatory and economic impact. The information obtained assists the Commission in identifying those rules and guides that warrant modification or rescission. Therefore, the Commission solicits comments on, among other things, the economic impact and benefits of the Rule; possible conflict between the Rule and state, local, or other federal laws or regulations; and the effect on the Rule of any technological, economic, or other industry changes.

III. Issues for Comment

The Commission requests written comment on any or all of the following questions. These questions are designed to assist the public and should not be construed as a limitation on the issues about which public comment may be submitted. The Commission requests that responses to its questions be as specific as possible, including a reference to the question being answered, and refer to empirical data or other evidence upon which the comment is based whenever available and appropriate. Please also provide evidence of the prevalence of any unfair acts or practices that any proposed modification would address.

A. General Issues

1. Is there a continuing need for specific provisions of the Rule? Why or why not?

2. What benefits has the Rule provided to consumers? What evidence supports the asserted benefits?

3. What modifications, if any, should be made to the Rule to increase its benefits to consumers?

a. What evidence supports the proposed modifications?

b. How would these modifications affect the costs the Rule imposes on businesses, including small businesses?

4. What significant costs, if any, has the Rule imposed on consumers? What evidence supports the asserted costs?

5. What modifications, if any, should be made to the Rule to reduce any costs imposed on consumers?

a. What evidence supports the proposed modifications?

b. How would these modifications affect the benefits provided by the Rule?

6. What benefits, if any, has the Rule provided to businesses, including small businesses? What evidence supports the asserted benefits?

7. What modifications, if any, should be made to the Rule to increase its benefits to businesses, including small businesses?

a. What evidence supports the proposed modifications?

b. How would these modifications affect the costs the Rule imposes on businesses, including small businesses?

c. How would these modifications affect the benefits to consumers?

8. What significant costs, if any, including costs of compliance, has the Rule imposed on businesses, including small businesses? What evidence supports the asserted costs?

9. What modifications, if any, should be made to the Rule to reduce the costs imposed on businesses, including small businesses?

a. What evidence supports the proposed modifications?

b. How would these modifications affect the benefits provided by the Rule?

10. What evidence is available concerning the degree of industry compliance with the Rule?

11. What modifications, if any, should be made to the Rule to account for changes in relevant technology or economic conditions? What evidence supports the proposed modifications?

12. Does the Rule overlap or conflict with other federal, state, or local laws or regulations? If so, how?

a. What evidence supports the asserted conflicts?

b. With reference to the asserted conflicts, should the Rule be modified? If so, why, and how? If not, why not?

B. Specific Issues

1. Should the elements of an information security program include a response plan in the event of a breach that affects the security, integrity, or confidentiality of customer information? Why or why not? If so, what should such a plan contain?

a. What evidence supports such a modification?

b. How would this modification affect the costs the Rule imposes on businesses, including small businesses?

c. How would this modification affect the benefits to businesses?

d. How would this modification affect the costs the Rule imposes on consumers?

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[9] 16 CFR 314.2(c).

[10] 16 CFR 314.3(a).

[11] *Id.*

[12] 16 CFR 314.3(a), (b).

[13] 16 CFR 314.4(b).

[14] 16 CFR 314.4(c).

[15] 16 CFR 314.4(e).

[16] 16 CFR 314.4(a).

[17] 16 CFR 314.4(d).

e. How would this modification affect the benefits to consumers?

2. Should the Rule be modified to include more specific and prescriptive requirements for information security plans? Why or why not? If so, what requirements should be included and what sources should they be drawn from?

a. What evidence supports such a modification?

b. How would this modification affect the costs the Rule imposes on businesses, including small businesses?

c. How would this modification affect the benefits to businesses?

d. How would this modification affect the costs the Rule imposes on consumers?

e. How would this modification affect the benefits to consumers?

3. Should the Rule be modified to reference or incorporate any other information security standards or frameworks, such as the National Institute of Standards and Technology's Cybersecurity Framework or the Payment Card Industry Data Security Standards? If so, which standards should be incorporated or referenced and how should they by referenced or incorporated by the Rule?

a. What evidence supports such a modification?

b. How would this modification affect the costs the Rule imposes on businesses, including small businesses?

c. How would this modification affect the benefits to businesses?

d. How would this modification affect the costs the Rule imposes on consumers?

e. How would this modification affect the benefits to consumers?

4. For the purpose of clarity, should the Rule be modified to include its own definitions of terms, such as "financial institution", rather than incorporating the definitions found in the Privacy Rule?

a. What evidence supports such a modification?

b. How would this modification affect the costs the Rule imposes on businesses, including small businesses?

c. How would this modification affect the benefits to businesses?

d. How would this modification affect the costs the Rule imposes on consumers?

e. How would this modification affect the benefits to consumers?

5. The current Safeguards Rule incorporates the Privacy Rule's definition of "financial institutions" as entities that are significantly engaged in financial activities, including activities found to be closely related to banking by regulation or order in effect at the time of enactment of the G-L-B Act. Should the Safeguards Rule's definition of "financial institution" be modified to also include entities that are significantly engaged in activities that the Federal Reserve Board has found to be incidental to financial activities? Should it also include activities that have been found to be closely related to banking or incidental to financial activities by regulation or order in effect *after* the enactment of the G-L-B Act?[18] If so, should all such activities be included in the modified definition? What evidence supports such a modification?

a. How would this modification affect the costs the Rule imposes on businesses, including small businesses?

b. How would this modification affect the benefits to businesses?

c. How would this modification affect the costs the Rule imposes on consumers?

d. How would this modification affect the benefits to consumers?

IV. Instructions for Submitting Comments

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before November 7, 2016. Write "Safeguards Rule, 16 CFR 314, Matter No. P145407" on the comment. Your comment, including your name and your state, will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *https://www.ftc.gov/policy/public-comments.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site. Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as a Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or payment card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information.

In addition, do not include any "[t]rade secret or any commercial or financial information which is . . . privileged or confidential," as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you must follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comments to be withheld from the public record. Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comment online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/safeguardsrulenprm* by following the instructions on the web-based form. If this document appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write "Safeguards Rule, 16 CFR 314, Matter No. P145407" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex B), Washington, DC 20024.

Visit the Commission Web site at *http://www.ftc.gov* to read this document and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before November 7, 2016. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *http://www.ftc.gov/ftc/privacy.htm.*

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[18] *See* 65 FR 80,735 (Dec. 22, 2000) (determining the activity of "finding" to be an activity incidental to financial activity).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2016–21231 Filed 9–6–16; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–440]

Schedules of Controlled Substances: Temporary Placement of U–47700 Into Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of intent.

SUMMARY: The Administrator of the Drug Enforcement Administration is issuing this notice of intent to temporarily schedule the synthetic opioid, 3,4-dichloro-*N*-[2-(dimethylamino)cyclohexyl]-*N*-methylbenzamide (also known as U–47700), into schedule I pursuant to the temporary scheduling provisions of the Controlled Substances Act. This action is based on a finding by the Administrator that the placement of this synthetic opioid into schedule I of the Controlled Substances Act is necessary to avoid an imminent hazard to the public safety. Any final order will impose the administrative, civil, and criminal sanctions and regulatory controls applicable to schedule I controlled substances under the Controlled Substances Act on the manufacture, distribution, possession, importation, exportation, research, and conduct of, instructional activities of this synthetic opioid.

DATES: September 7, 2016.

FOR FURTHER INFORMATION CONTACT: Michael J. Lewis, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION: Any final order will be published in the **Federal Register** and may not be effective prior to October 7, 2016.

Legal Authority

The Drug Enforcement Administration (DEA) implements and enforces titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended. 21 U.S.C. 801–971. Titles II and III are referred to as the "Controlled Substances Act" and the "Controlled Substances Import and Export Act," respectively, and are collectively referred to as the "Controlled Substances Act" or the "CSA" for the purpose of this action. The DEA publishes the implementing regulations for these statutes in title 21 of the Code of Federal Regulations (CFR), chapter II. The CSA and its implementing regulations are designed to prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while providing for the legitimate medical, scientific, research, and industrial needs of the United States. Controlled substances have the potential for abuse and dependence and are controlled to protect the public health and safety.

Under the CSA, each controlled substance is classified into one of five schedules based upon its potential for abuse, its currently accepted medical use in treatment in the United States, and the degree of dependence the drug or other substance may cause. 21 U.S.C. 812. The initial schedules of controlled substances established by Congress are found at 21 U.S.C. 812(c), and the current list of all scheduled substances is published at 21 CFR part 1308.

Section 201 of the CSA, 21 U.S.C. 811, provides the Attorney General with the authority to temporarily place a substance into schedule I of the CSA for two years without regard to the requirements of 21 U.S.C. 811(b) if she finds that such action is necessary to avoid imminent hazard to the public safety. 21 U.S.C. 811(h)(1). In addition, if proceedings to control a substance are initiated under 21 U.S.C. 811(a)(1), the Attorney General may extend the temporary scheduling for up to one year. 21 U.S.C. 811(h)(2).

Where the necessary findings are made, a substance may be temporarily scheduled if it is not listed in any other schedule under section 202 of the CSA, 21 U.S.C. 812, or if there is no exemption or approval in effect for the substance under section 505 of the Federal Food, Drug, and Cosmetic Act (FDCA), 21 U.S.C. 355. 21 U.S.C. 811(h)(1). The Attorney General has delegated scheduling authority under 21 U.S.C. 811 to the Administrator of the DEA. 28 CFR 0.100.

Background

Section 201(h)(4) of the CSA, 21 U.S.C. 811(h)(4), requires the Administrator to notify the Secretary of the Department of Health and Human Services (HHS) of his intention to temporarily place a substance into schedule I of the CSA.[1] The Administrator transmitted notice of his intent to place U–47700 in schedule I on a temporary basis to the Assistant Secretary by letter dated April 18, 2016. The Assistant Secretary responded to this notice by letter dated April 28, 2016, and advised that based on review by the Food and Drug Administration (FDA), there are currently no investigational new drug applications or approved new drug applications for U–47700. The Assistant Secretary also stated that the HHS has no objection to the temporary placement of U–47700 into schedule I of the CSA. U–47700 is not currently listed in any schedule under the CSA, and no exemptions or approvals are in effect for U–47700 under section 505 of the FDCA, 21 U.S.C. 355. The DEA has found that the control of U–47700 in schedule I on a temporary basis is necessary to avoid an imminent hazard to public safety.

To find that placing a substance temporarily into schedule I of the CSA is necessary to avoid an imminent hazard to the public safety, the Administrator is required to consider three of the eight factors set forth in section 201(c) of the CSA, 21 U.S.C. 811(c): The substance's history and current pattern of abuse; the scope, duration and significance of abuse; and what, if any, risk there is to the public health. 21 U.S.C. 811(h)(3). Consideration of these factors includes actual abuse, diversion from legitimate channels, and clandestine importation, manufacture, or distribution. 21 U.S.C. 811(h)(3).

A substance meeting the statutory requirements for temporary scheduling may only be placed in schedule I. 21 U.S.C. 811(h)(1). Substances in schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. 21 U.S.C. 812(b)(1).

U–47700

The substance U–47700 was first described in 1978 in the patent literature. Publications in the scientific literature in the early 1980's found that U–47700 behaved similarly to morphine in animal models. No approved medical use has been identified for this synthetic opioid, nor has it been approved by the FDA for human consumption. The recent identification of U–47700 in drug evidence and the identification of this substance in association with fatal overdose events indicate that this substance is being abused for its morphine-like properties. In addition, U–47700 is available for purchase over the Internet and is marketed as a "research chemical." Labels which state "not for human consumption" or "for research purposes only" have been encountered and are likely used in an effort to circumvent statutory restrictionson controlled substance analogues. 21 U.S.C. 813.

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[1] As discussed in a memorandum of understanding entered into by the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA), the FDA acts as the lead agency within the HHS in carrying out the Secretary's scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518, Mar. 8, 1985. The Secretary of the HHS has delegated to the Assistant Secretary for Health of the HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460, July 1, 1993.

Available data and information for U–47700, summarized below, indicate that this synthetic opioid has a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. The DEA's three-factor analysis is available in its entirety under the public docket of this action as a supporting document at *www.regulations.gov* under Docket Number DEA–440.

Factor 4. History and Current Pattern of Abuse

The National Forensic Laboratory Information System (NFLIS) is a national drug forensic laboratory reporting system that systematically collects results from drug chemistry analyses conducted by State and local forensic laboratories across the country. The first laboratory submissions of U–47700 were recorded in the first quarter of 2016; 10 records were reported from January–March 2016 according to NFLIS (query date: 06/20/2016).

On October 1, 2014, the DEA implemented STARLiMS (a web-based, commercial laboratory information management system) as its laboratory drug evidence data system of record. DEA laboratory data submitted after September 30, 2014, are reposited in STARLiMS; data from STARLiMS were queried on April 12, 2016. STARLiMS registered one report containing U–47700 in 2016 from Montana. Through information collected from law enforcement reports and personal communications,[2] [3] the DEA is aware of the identification of U–47700 from toxicology reports and submitted evidence to forensic laboratories in several states, including New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Texas, and Wisconsin. These identifications occurred in 2015 and 2016.

Evidence suggests that the pattern of abuse of synthetic opioids, including U–47700, parallels that of heroin and prescription opioid analgesics. Seizures of U–47700 have been encountered in powder form and in counterfeit tablets that mimic pharmaceutical opioids. U–47700 has also been encountered in glassine bags and envelopes and knotted corners of plastic bags, which demonstrates the abuse of this substance as a replacement for heroin or other opioids, either knowingly or unknowingly. U–47700 has been encountered as a single substance as well as in combination with other substances, including heroin, fentanyl, and furanyl fentanyl.

Factor 5. Scope, Duration and Significance of Abuse

The DEA is currently aware of at least 15 confirmed fatalities associated with U–47700. The information on these deaths occurring in 2015 and 2016 was collected from personal communications and toxicology and medical examiner reports and was reported from New Hampshire (1), North Carolina (10), Ohio (1), Texas (2), and Wisconsin (1). The population likely to abuse U–47700 appears to overlap with the populations abusing prescription opioid analgesics and heroin, as evidenced by drug use history documented in U–47700 fatal overdose cases. This is further supported by U–47700 being sold on the illicit market in glassine bags, some of which are marked with stamped logos, imitating the sale of heroin. Because abusers of U–47700 are likely to obtain this substance through non-regulated sources, the identity, purity, and quantity is uncertain and inconsistent, thus posing significant adverse health risks to the end user. Individuals who initiate (*i.e.* use an illicit drug for the first time) U–47700 abuse are likely to be at risk of developing substance use disorder, overdose, and death similar to that of other opioid analgesics (*e.g.,* fentanyl, morphine, etc.).

STARLiMS contains a report in which U–47700 was identified in drug exhibits submitted in 2016 from Montana. A query of NFLIS returned 10 records of U–47700 being identified in exhibits submitted to Federal, State and local forensic laboratories in the first quarter of 2016. The DEA is not aware of any laboratory analyses of drug evidence identifying U–47700 prior to 2015, indicating that this synthetic opioid only recently became available as a replacement for other opioids that are commonly abused (*i.e.* oxycodone, heroin, fentanyl). U–47700 is available over the Internet and is marketed as a "research chemical" which allows this substance to be easily obtainable.

Factor 6. What, if Any, Risk There Is to the Public Health

U–47700 exhibits pharmacological profiles similar to that of morphine and other mu-opioid receptor agonists. Due to limited scientific data, the potency and toxicity of U–47700 are not known; however, the toxic effects of U–47700 in humans are demonstrated by overdose fatalities associated with this substance. Abusers of U–47700 may not know the origin, identity, or purity of these substances, thus posing significant adverse health risks when compared to abuse of pharmaceutical preparations of opioid analgesics, such as morphine and oxycodone.

Based on the documented case reports of overdose fatalities, the abuse of U–47700 leads to the same qualitative public health risks as heroin, fentanyl and other opioid analgesic substances. The public health risks attendant to the abuse of heroin and opioid analgesics are well established and have resulted in large numbers of drug treatment admissions, emergency department visits, and fatal overdoses.

U–47700 has been associated with fatalities. At least 15 confirmed overdose deaths involving U–47700 occurred in 2015 and 2016 in New Hampshire (1), North Carolina (10), Ohio (1), Texas (2), and Wisconsin (1). This indicates that U–47700 poses an imminent hazard to the public safety.

Finding of Necessity of Schedule I Placement to Avoid Imminent Hazard To Public Safety

In accordance with 21 U.S.C. 811(h)(3), based on the available data and information summarized above, the continued uncontrolled manufacture, distribution, reverse distribution, importation, exportation, conduct of research and chemical analysis, possession, and abuse of U–47700 poses an imminent hazard to the public safety. The DEA is not aware of any currently accepted medical uses for U–47700 in the United States. A substance meeting the statutory requirements for temporary scheduling, 21 U.S.C. 811(h)(1), may only be placed in schedule I. Substances in schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. Available data and information for U–47700 indicate that this substance has a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. As required by section 201(h)(4) of the CSA, 21 U.S.C. 811(h)(4), the Administrator, through a letter dated April 18, 2016, notified the Assistant Secretary of the DEA's intention to temporarily place this substance in schedule I.

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[2] Email from North Carolina Department of Health and Human Services, to DEA (April 13, 2016 09:54 a.m. EST) (on file with DEA).

[3] Email from Erie County, Central Police Services, to DEA (March 22, 2016 10:12 a.m. EST) (on file with DEA).

Conclusion

This notice of intent initiates an expedited temporary scheduling action and provides the 30-day notice pursuant to section 201(h) of the CSA, 21 U.S.C. 811(h). In accordance with the provisions of section 201(h) of the CSA, 21 U.S.C. 811(h), the Administrator considered available data and information, herein set forth the grounds for his determination that it is necessary to temporarily schedule U–47700 in schedule I of the CSA, and finds that placement of this synthetic opioid into schedule I of the CSA is necessary in order to avoid an imminent hazard to the public safety.

Because the Administrator hereby finds that it is necessary to temporarily place this synthetic opioid into schedule I to avoid an imminent hazard to the public safety, any subsequent final order temporarily scheduling this substance will be effective on the date of publication in the **Federal Register**, and will be in effect for a period of two years, with a possible extension of one additional year, pending completion of the regular scheduling process. 21 U.S.C. 811(h) (1) and (2). It is the intention of the Administrator to issue such a final order as soon as possible after the expiration of 30 days from the date of publication of this notice. U–47700 will then be subject to the regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, importation, exportation, research, conduct of instructional activities and chemical analysis, and possession of a schedule I controlled substance.

The CSA sets forth specific criteria for scheduling a drug or other substance. Regular scheduling actions in accordance with 21 U.S.C. 811(a) are subject to formal rulemaking procedures done "on the record after opportunity for a hearing" conducted pursuant to the provisions of 5 U.S.C. 556 and 557. 21 U.S.C. 811. The regular scheduling process of formal rulemaking affords interested parties with appropriate process and the government with any additional relevant information needed to make a determination. Final decisions that conclude the regular scheduling process of formal rulemaking are subject to judicial review. 21 U.S.C. 877. Temporary scheduling orders are not subject to judicial review. 21 U.S.C. 811(h)(6).

Regulatory Matters

Section 201(h) of the CSA, 21 U.S.C. 811(h), provides for an expedited temporary scheduling action where such action is necessary to avoid an imminent hazard to the public safety. As provided in this subsection, the Attorney General may, by order, schedule a substance in schedule I on a temporary basis. Such an order may not be issued before the expiration of 30 days from (1) the publication of a notice in the **Federal Register** of the intention to issue such order and the grounds upon which such order is to be issued, and (2) the date that notice of the proposed temporary scheduling order is transmitted to the Assistant Secretary of HHS. 21 U.S.C. 811(h)(1).

Inasmuch as section 201(h) of the CSA directs that temporary scheduling actions be issued by order and sets forth the procedures by which such orders are to be issued, the DEA believes that the notice and comment requirements of section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, do not apply to this notice of intent. In the alternative, even assuming that this notice of intent might be subject to section 553 of the APA, the Administrator finds that there is good cause to forgo the notice and comment requirements of section 553, as any further delays in the process for issuance of temporary scheduling orders would be impracticable and contrary to the public interest in view of the manifest urgency to avoid an imminent hazard to the public safety.

Although the DEA believes this notice of intent to issue a temporary scheduling order is not subject to the notice and comment requirements of section 553 of the APA, the DEA notes that in accordance with 21 U.S.C. 811(h)(4), the Administrator will take into consideration any comments submitted by the Assistant Secretary with regard to the proposed temporary scheduling order.

Further, the DEA believes that this temporary scheduling action is not a "rule" as defined by 5 U.S.C. 601(2), and, accordingly, is not subject to the requirements of the Regulatory Flexibility Act (RFA). The requirements for the preparation of an initial regulatory flexibility analysis in 5 U.S.C. 603(a) are not applicable where, as here, the DEA is not required by section 553 of the APA or any other law to publish a general notice of proposed rulemaking.

Additionally, this action is not a significant regulatory action as defined by Executive Order 12866 (Regulatory Planning and Review), section 3(f), and, accordingly, this action has not been reviewed by the Office of Management and Budget (OMB).

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132 (Federalism) it is determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, the DEA proposes to amend 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

■ 2. In § 1308.11, add paragraph (h)(21). The addition reads as follows:

§ 1308.11 Schedule I

* * * * *

(h) * * *

(21) 3,4-Dichloro-*N*-[2-(dimethylamino)cyclohexyl]-*N*-methylbenzamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers (Other names: U–47700). (9547)

* * * * *

Dated: August 31, 2016.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2016–21477 Filed 9–6–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket Number USCG–2016–0132]

RIN 1625–AA01

Anchorage Grounds, Hudson River; Yonkers, NY to Kingston, NY

AGENCY: Coast Guard, DHS.

ACTION: Advance notice of proposed rulemaking; change in comment period.

SUMMARY: The Coast Guard is changing the comment period on the advance notice of proposed rulemaking (ANPRM) it published June 9, 2016, regarding anchorage grounds on the Hudson River from Yonkers, NY, to Kingston, NY. Comments will now be due on or before December 6, 2016 instead of September 7, 2016. As of August 29, 2016, the Coast Guard has received more than 2,100 public submissions from many interested persons commenting on the ANPRM. We are extending the comment period to continue encouraging this important public discussion.

DATES: Comments and related material must be received by the Coast Guard on or before December 6, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0132 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call or email Mr. Craig Lapiejko, Waterways Management Branch at Coast Guard First District, telephone 617–223–8351, email *craig.d.lapiejko@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Table of Acronyms

ANPRM	Advance notice of proposed rulemaking
DHS	Department of Homeland Security
FR	Federal Register

A. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received due on or before December 6, 2016. Your comments can help shape the outcome of this possible rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in the ANPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. For illustrations showing the locations of anchorage grounds being considered in the ANPRM, look for the documents in the Supporting & Related Material category. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted and if we publish rulemaking documents related to the ANPRM.

B. Basis and Purpose

The Coast Guard is responsible for considering adjustments to improve navigational and environmental safety of waterways, including those requested by groups of mariners. On June 9, 2016, the Coast Guard published an ANPRM in the **Federal Register** (81 FR 37168) entitled Anchorage Grounds, Hudson River; Yonkers, NY, to Kingston, NY. With its publication, we initiated the early stage of a methodical and public rulemaking process to learn all possible navigational, environmental, terrestrial, and other effects of adding anchorages on the Hudson River. The ANPRM is a preliminary step, the goal of which is to gather information that defines the multiple stakeholder considerations we need to incorporate when considering proposed rule for potential anchorage grounds. This ANPRM solicitation has generated more than 2,100 public submissions with comments on the subject from many diverse stakeholders. This wide-ranging feedback is very helpful. To continue encouraging this important public discussion, we are adding an additional 90 days to the comment period.

C. Information Requested

Public participation is requested to assist in determining the best way forward with respect to establishing new anchorage grounds on the Hudson River between Yonkers, NY, to Kingston, NY. To aid us in developing a possible proposed rule, we seek any comments, whether positive or negative, including but not limited to the impacts anchorage grounds may have on navigation safety and current vessel traffic in this area, the proposed number and size of vessels anchoring in each proposed anchorage ground, and the authorized duration for each vessel in each proposed anchorage ground. We are also seeking comments on any additional locations where anchorage grounds may be helpful on the Hudson River or any recommended alterations to the specific locations considered in this notice. Please submit any comments or concerns you may have in accordance with the "Public Participation and Request for Comments" section above.

Dated: August 31, 2016.

Steven D. Poulin,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 2016–21371 Filed 9–6–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 59

RIN 937–AA04

Compliance With Title X Requirements by Project Recipients in Selecting Subrecipients

AGENCY: Office of Population Affairs, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document seeks comment on the proposed amendment of Title X regulations specifying the requirements Title X projects must meet to be eligible for awards. The amendment precludes project recipients from using criteria in their selection of subrecipients that are unrelated to the ability to deliver services to program beneficiaries in an effective manner.

DATES: To be considered, comments should be submitted by October 7, 2016. Subject to consideration of the comments submitted, the Department will publish final regulations.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 937–AA04, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Enter the above docket ID number in the "Enter Keyword or ID" field and click on "Search." On the next Web page, click on "Submit a Comment" action and follow the instructions.
- *Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions] to:* Susan B. Moskosky, MS, WHNP–BC, Office of Population Affairs, Department of Health and Human Services, 200 Independence Avenue SW., Suite 716G, Washington, DC 20201. Comments received, including any personal information, will be posted without change to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Susan B. Moskosky, MS, WHNP–BC, Office of Population Affairs (OPA), 200 Independence Avenue SW., Suite 716G, Washington, DC 20201; telephone: 240–453–2800; facsimile: 240–453–2801; email: *OPA_Resource@hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Title X Background

The Title X Family Planning Program, Public Health Service Act (PHSA) secs. 1001 *et seq.* [42 U.S.C. 300], was enacted in 1970 as part of the Public Health Service Act. Administered by the Office of Population Affairs (OPA) within the Office of the Assistant Secretary for Health (OASH), Title X is the only Federal program focused solely on providing family planning and related preventive services. In 2015, more than 4 million individuals received services through more than 3,900 Title X-funded health centers.[1]

Title X serves women, men, and adolescents to enable individuals to freely determine the number and spacing of children. By law, services are provided to low-income individuals at no or reduced cost. Services provided through Title X-funded health centers assist in preventing unintended pregnancies and achieving pregnancies that result in positive birth outcomes. These services include contraceptive services, pregnancy testing and counseling, preconception health services, screening and treatment for sexually transmitted diseases (STD) and HIV testing and referral for treatment, services to aid with achieving pregnancy, basic infertility services, and screening for cervical and breast cancer. By statute, Title X funds are not available to programs where abortion is a method of family planning (PHSA sec. 1008), and no federal funds in Title X or any federal program may be expended for abortions except in cases of rape, incest, or where the life of the mother would be endangered.[2] Additionally, Title X implementing regulations require that all pregnancy counseling shall be neutral and nondirective. 42 CFR 59.5(a)(5)(ii).

The Title X statute authorizes the Secretary "to make grants to and enter into contracts with public or nonprofit private entities to assist in the establishment and operation of voluntary family planning projects which shall offer a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents)." PHSA sec. 1001(a). In addition, in awarding Title X grants and contracts, the Secretary must "take into account the number of patients to be served, the relative need of the applicant, and its capacity to make rapid and effective use of such assistance." PHSA sec. 1001(b). The statute also mandates that local and regional entities "shall be assured the right to apply for direct grants and contracts." PHSA sec. 1001(b). The statute delegates rulemaking authority to the Secretary to set the terms and conditions of these grants and contracts. PHSA sec. 1006. These regulations were last revised in 2000. 65 FR 41270 (July 3, 2000).

Title X regulations delineating the criteria used to decide which family planning projects to fund and in what amount, include, among other factors, the extent to which family planning services are needed locally, the number of patients to be served (and, in particular, low-income patients), and the adequacy of the applicant's facilities and staff. 42 CFR 59.7. Project recipients receive funds directly from the Federal government following a competitive process. The project recipients may elect to provide Title X services directly or by subawarding funds to qualified entities (subrecipients). HHS is responsible for monitoring and evaluating the project recipient's performance and outcomes, and each project recipient that subawards to qualified subrecipients is responsible for monitoring the performance and outcomes of those subrecipients. The subrecipients must meet the same Federal requirements as the project recipients, including being a public or private nonprofit entity, and adhering to all Title X and other applicable federal requirements. In the event of poor performance or noncompliance, a project recipient may take enforcement actions as described in the uniform grants rules at 45 CFR 75.371.

B. State Restrictions on Subrecipients

In the past several years, a number of states have taken actions to restrict participation by certain types of providers as subrecipients in the Title X Program, unrelated to the provider's ability to provide the services required under Title X. In at least several instances, this has led to disruption of services or reduction of services. Since 2011, 13 states have placed restrictions on or eliminated subawards with specific types of providers based on reasons unrelated to their ability to provide required services in an effective manner. When the state health department is a Title X recipient, these restrictions on subrecipient participation can apply. In several instances, these restrictions have interfered with the "capacity [of the applicant] to make rapid and effective use of [Title X federal] assistance." PHSA sec. 1001(b). Moreover, states that restrict eligibility of subrecipients have caused limitations in the geographic distribution of services, and decreased access to services through trusted and qualified providers.

States have restricted subrecipients from participating in the Title X program in several ways. Some states have employed a tiered approach to compete or distribute Title X funds, whereby entities such as comprehensive primary care providers, state health departments, or community health centers receive a preference in the distribution of Title X funds. This approach effectively excludes providers focused on reproductive health from receiving funds, even though they have been shown to provide higher quality services, such as preconception services, and accomplish Title X programmatic objectives more effectively.[3] [4] For example, in 2011,

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[1] Fowler, C. I., Gable, J., Wang, J., & Lasater, B. (2016, August). Family Planning Annual Report: 2015 National Summary. Research Triangle Park, NC: RTI International.

[2] Consolidated Appropriations Act, 2016, Division H, Title V, Public Law 114–113, secs. 506–07, 129 Stat. 2242, 2649 (2015).

[3] Robbins, C.L., Gavin, L., Zapata, L.B., Carter, M.W., Lachance, C., Mautone-Smith, N., & Moskosky, S.B. (2016). Preconception Care in Publicly Funded U.S. Clinics That Provide Family Planning Services. American Journal of Preventive Medicine. doi:10.1016/j.amepre.2016.02.013

[4] Carter, M.W., Gavin, L., Zapata, L.B., Bornstein, M., Mautone-Smith, N., & Moskosky, S. B. (2016). Four aspects of the scope and quality of family planning services in US publicly funded health centers: Results from a survey of health center administrators. Contraception. doi:10.1016/j.contraception.2016.04.009

Texas reduced its contribution to family planning services, and also re-competed subawards of Title X funds using a tiered approach. The combination of these actions decreased the Title X provider network from 48 to 36 providers, and the number of Title X clients served was reduced dramatically. Although another entity became the statewide project recipient in 2013, the number of Title X clients served decreased from 259,606 in 2011 to 166,538 in 2015.[5] [6] In other cases, states have prohibited specific types of providers from being eligible to receive Title X subawards, which has had a direct impact on service availability, primarily for low-income women. In some cases, experienced providers that have historically served large numbers of patients in major cities or geographic areas have been eliminated from participation in the Title X program. In Kansas, for example, following the exclusion of specific family planning providers in 2011, the number of clients, 87 percent of whom were low income (at or below 200 percent of the Federal Poverty Level), declined from 38,461 in 2011 to 24,047 in 2015, a decrease of more than 37 percent. As with the declines in Texas, this is a far greater decrease than the national average of 20 percent.[7] [8]

In New Hampshire, in 2011, the New Hampshire Executive Council voted not to renew the state's contract with a specific provider that was contracted to provide Title X family planning services for more than half of the state. To restore services to clients in the unserved part of the state, HHS issued an emergency replacement grant, but there was significant disruption in the delivery of services, and for approximately three months, no Title X services were available to potential clients in a part of the state.

Most recently, in 2016 Florida enacted a law that would have gone into effect on July 1, 2016, prohibiting the state from making Title X subawards to certain family planning providers.[9] In one county alone, 1,820 clients are served by the family planning provider that would have been excluded, and it is not clear how the needs of those clients would have been met.

None of these state restrictions are related to the subrecipients' ability to effectively deliver Title X services. The previously mentioned exclusions are based either on non-Title X health services offered or other activities the providers conduct with non-federal funds, or because they are a certain type of provider. The Title X program provides family planning services based on "the number of patients to be served, the extent to which family planning services are needed locally, the relative need of the applicant, and its capacity to make rapid and effective use of [Title X Federal] assistance." PHSA sec. 1001(b). Allowing project recipients, including states and other entities, to impose restrictions on subrecipients that are unrelated to the ability of subrecipients to provide Title X services in an effective manner has been shown to have an adverse effect on access to Title X services and therefore the fundamental goals of the Title X program.

C. Litigation

Litigation concerning these restrictions has led to inconsistency across states in how recipients may choose subrecipients. As the restrictions vary, so have the statutory and constitutional issues in the cases. For example, in *Planned Parenthood of Kansas & Mid-Missouri* v. *Moser,* 747 F.3d 814, 824–25 (10th Cir. 2014), the U.S. Court of Appeals for the Tenth Circuit preliminarily upheld a state law that did not explicitly exclude a particular provider, but directed all Title X funding to be allocated to hospitals and community health centers. In finding that Title X did not provide a private cause of action for the plaintiffs, the Court reasoned: "HHS has deep experience and expertise in administering Title X, and the great breadth of the statutory language suggests a congressional intent to leave the details to the agency. . . . Absent private suits, HHS can maintain uniformity in administration with centralized control. . . . Of course, administrative actions taken by HHS will often be reviewable under the Administrative Procedure Act, but only after the federal agency has examined the matter and had the opportunity to explain its analysis to a court that must show substantial deference." Thus, while finding deference would be afforded any agency determination of Title X requirements, the court did not reach the merits of the plaintiff's Supremacy Clause claims.

At least two other U.S. Courts of Appeal have specifically held that Title X prohibits state laws that have restrictive subrecipient eligibility criteria. *See Planned Parenthood of Houston & Se. Tex.* v. *Sanchez,* 403 F.3d 324, 337 (5th Cir. 2005) ("[A] state eligibility standard that altogether excludes entities that might otherwise be eligible for federal funds is invalid under the Supremacy Clause."); *Planned Parenthood Fed'n of Am.* v. *Heckler,* 712 F.2d 650, 663 (D.C. Cir. 1983) ("Although Congress is free to permit the states to establish eligibility requirements for recipients of Title X funds, Congress has not delegated that power to the states. Title X does not provide, or suggest, that states are permitted to determine eligibility criteria for participants in Title X programs." (internal quotation marks and citation omitted)); *see also Planned Parenthood of Cent. N. Carolina* v. *Cansler,* 877 F. Supp. 2d 310, 331–32 (M.D.N.C. 2012) ("Therefore, the Court concludes once again that the fact that Plaintiff may, at some point in the future, be able to apply directly for Title X funding does not mean that the state may now or in the future impose additional eligibility criteria or exclusions with respect to the Title X funding administered by the state."); *Planned Parenthood of Billings, Inc.* v. *State of Mont.,* 648 F. Supp. 47, 50 (D. Mont. 1986) ("Based on the foregoing, the Court concludes the co-location proviso contained in the Montana General Appropriations Act of 1985 adds an impermissible condition of eligibility for federal funding under the Public Health Service Act, in violation of the Supremacy clause.").

These and other appellate courts have also considered First Amendment issues in adjudicating state restrictions, though not all cases have involved Title X funds. Some courts have concluded certain state restrictions do not violate the Constitution. *See, e.g., Planned Parenthood of Indiana, Inc.* v. *Comm'r of Indiana State Dep't of Health,* 699 F. 3d 962, 988 (7th Cir. 2012); *see also Planned Parenthood Ass'n of Hidalgo Cty. Texas, Inc.* v. *Suehs,* 692 F.3d 343, 350 (5th Cir. 2012). Other courts have found the restrictions violate the Constitution by conditioning funding on First Amendment rights. *See Planned*

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[5] Fowler, CI, Lloyd, S, Gable, J, Wang, J, and McClure, E. (November 2012). Family Planning Annual Report: 2011 National Summary. Research Triangle Park, NC: RTI International.

[6] Fowler, C.I., Gable, J., Wang, J., & Lasater, B. (2016, August). Family Planning Annual Report: 2015 National Summary. Research Triangle Park, NC: RTI International.

[7] Fowler, CI, Lloyd, S, Gable, J, Wang, J, and McClure, E. (November 2012). Family Planning Annual Report: 2011 National Summary. Research Triangle Park, NC: RTI International.

[8] Fowler, C.I., Gable, J., Wang, J., & Lasater, B. (2016, August). Family Planning Annual Report: 2015 National Summary. Research Triangle Park, NC: RTI International.

[9] H.B. 1411, 2016 Leg., Reg. Sess. (Fla. 2016). The law was preliminarily enjoined on June 30, 2016. *Planned Parenthood of Southwest and Central Florida* v. *Philip, et al.* No. 4:16cv321–RH/CAS, 2016 U.S. Lexis 86251 (N.D. Fla. June 30, 2016) ("the defunding provision does not survive the unconstitutional conditions doctrine."). The law was permanently enjoined on August 18, 2016, in an unpublished order.

Parenthood Association of Utah v. *Herbert,* No. 2:15–CV–00693–CW, 2016 U.S. App. LEXIS 12788, *36–38, (10th Cir. July 12, 2016)); *Planned Parenthood of Southwest and Central Florida* v. *Philip et al.,* No. 4:16cv321–RH/CAS, 2016 U.S. Dist. LEXIS 86251, *15–16 (N.D. Fl. June 30, 2016); *Planned Parenthood of Greater Ohio* v. *Hodges,* No 1:116cv539, 2016 U.S. Dist. Lexis 106985, *22 (S.D. Oh. August 12, 2016).

II. Proposed Rule

The Department is proposing to amend the regulations at 42 CFR 59.3 to require that project recipients that do not provide services directly may not prohibit subrecipients from participating on bases unrelated to their ability to provide Title X services effectively. The proposed rule will maintain uniformity in administration, ensure consistency of subrecipient participation across grant awards, improve the provision of services to populations in appropriate geographic areas, and guarantee Title X resources are allocated on the basis of fulfilling Title X family planning goals. The deleterious effects already caused by restrictions in several states as outlined above justify a rule in order to fulfill the purpose of Title X. The proposed rule helps fulfill the declared purpose of providing a broad range of family planning methods and services to populations most in need. Nothing in the statute supports giving discretion to project recipients to make eligibility restrictions that may adversely affect accessibility of Title X services.

The proposed rule will further Title X's purpose by protecting access of intended beneficiaries to Title X service providers that offer a broad range of acceptable and effective family planning methods and services. Title X regulations at 42 CFR 59.7 lay out the criteria for how the Department decides which family planning projects to fund and in what amount, based on the Department's judgment as to which projects best promote the purposes of the statute. Among these criteria are: The number of patients to be served (in particular, low-income patients), as well as the adequacy of the applicant's facilities and staff.

Data show that specific provider types with a reproductive health focus provide a broader range of contraceptive methods on-site, and are more likely to have protocols that assist clients with initiating and continuing to use methods without barriers.[10] In addition, these providers have been shown to serve disproportionately more clients in need of publicly funded family planning services than do public health departments and federally qualified health centers (FQHCs). One reproductive-focused provider constitutes ten percent of all publicly supported family planning centers, yet serves more than one-third of the clients who obtain publicly supported contraceptive services. In comparison, one-third of all publicly funded clinics are administered by public health departments, and they serve only about one-third of clients that receive publicly-funded family planning services. On average, an individual FQHC serves 330 contraceptive clients per year and a health department serves 750, as compared to specific family planning providers that on average serve 3,000 contraceptive clients per year.[11] To exclude providers that serve large numbers of clients in need of publicly funded services limits access for patients who need these services. Furthermore, in 2011, 71 percent of family planning organizations in Texas widely offered long-acting reversible contraception; in 2012–2013 following enactment of legislation in Texas that reduced funding and restricted provider participation in the state's family planning program, only 46 percent of family planning agencies did so.[12]

In April 2014, CDC and the Office of Population Affairs released clinical recommendations, "*Providing Quality Family Planning Services: Recommendations of CDC and the U.S. Office of Population Affairs,*"[13] (QFP) which identify core components of quality family planning services. Preconception care (PCC) was identified as one of the most important services to be provided as part of high quality family planning. As explained in QFP, preconception care services "promote the health of women of reproductive age before conception, and help to reduce pregnancy-related adverse outcomes, such as low birth weight, premature birth, and infant mortality." A nationally representative study was performed prior to release of these recommendations to assess the prevalence of PCC services being delivered. Study results were tabulated according to the type of publicly funded site where the services were provided (Community Health Center, Health Department, Planned Parenthood, Outpatient Hospitals, and other clinics). Study results indicated that all provider types lagged behind the focused reproductive health providers in providing these PCC services, an indication of higher quality services.[14]

Another study, using nationally representative survey data, examined four aspects of the scope and quality of family planning service delivery before release of the QFP: The scope of family planning services provided, contraceptive methods provided onsite, written contraceptive counseling protocols, and youth-friendly services. In assessing the scope of family planning services provided, providers were asked about the provision of the following services in the past three months: Pregnancy diagnosis and counseling, contraceptive services, basic infertility services, STD screening, and preconception health care. To assess contraceptive methods provided onsite, questions were asked regarding the provision of a range of reversible methods on site, as well as the presence of contraceptive counseling protocols. Again, as described in the previous study, results were tabulated according to the type of publicly funded site where services were provided. Across all four aspects, the focused reproductive health providers provided services that were broader in scope and of higher quality across all four aspects of family planning service delivery.[15]

Data show that restricting specific providers of Title X services has harmful effects on access to family planning services and is linked with increased pregnancy rates that are not in line with population-wide trends. In addition, studies have shown that state actions to exclude specific family planning providers from publicly funded programs has contributed to a host of barriers to care and poor health outcomes, including reduced use of highly effective methods of contraception and corresponding increases in rates of childbirth among populations that rely on Federally supported care;[16] decreased utilization rates of other preventive services, including cancer screenings, particularly for women with low educational attainment;[17] and an increase in reported barriers to reproductive health care services, particularly for young, low-income, Spanish-speaking, and immigrant women.[18] Specifically, in Texas, when certain Title X providers were barred from participation in the program, in counties where those providers provided services, uptake of the most effective forms of contraception decreased by up to 35.5 percent, and the rate of childbirth covered by Medicaid increased by 1.9 percentage points, while pregnancy rates decreased in the rest of the state. Specifically, the study assessed rates of contraceptive method provision, method continuation, and childbirth covered by Medicaid between 2011 and 2014, corresponding to two years before and two years after the providers' exclusion.[19]

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[10] Frost JJ et al., Variation in Service Delivery Practices Among Clinics Providing Publicly Funded Family Planning Services in 2010, New York: Guttmacher Institute, 2012, <*www.guttmacher.org/pubs/clinic-survey-2010.pdf*>.

[11] Frost JJ, Zolna MR and Frohwirth L, Contraceptive Needs and Services, 2010, New York: Guttmacher Institute, 2013, <*http://www.guttmacher.org/pubs/win/contraceptive-needs-2010.pdf*>.

[12] White, K., Hopkins, K., Aiken, A., Stevenson, A., Lopez, C.H., Grossman, D., & Potter, J. (2013). The impact of reproductive health legislation on family planning clinic services in Texas. Contraception, 88(3), 445. doi:10.1016/j.contraception.2013.05.059

[13] Gavin, L., & Pazol, K. (2016). Update: Providing Quality Family Planning Services—Recommendations from CDC and the U.S. Office of Population Affairs, 2015. MMWR. Morbidity and Mortality Weekly Report MMWR Morb. Mortal. Wkly. Rep., 65(9), 231–234. doi:10.15585/mmwr.mm6509a3.

[14] Robbins, C.L., Gavin, L., Zapata, L.B., Carter, M.W., Lachance, C., Mautone-Smith, N., & Moskosky, S.B. (2016). Preconception Care in Publicly Funded U.S. Clinics That Provide Family Planning Services. American Journal of Preventive Medicine. doi:10.1016/j.amepre.2016.02.013.

[15] Carter, M.W., Gavin, L., Zapata, L.B., Bornstein, M., Mautone-Smith, N., & Moskosky, S.B. (2016). Four aspects of the scope and quality of family planning services in US publicly funded health centers: Results from a survey of health center administrators. Contraception. doi:10.1016/j.contraception.2016.04.009.

Denying participation by family planning providers that can provide effective services has also resulted in populations in certain geographic areas being left without a Title X provider for an extended period of time, such as in New Hampshire in 2011 (detailed previously). In some cases, excluded providers do not have the administrative capacity to directly apply for and manage a Title X grant, as was the case in Kansas when specific family planning providers were excluded by the state from participation in the Title X Program. The data show that restrictions hurt the priority population for publicly funded family planning services, and that providers that are focused specifically on family planning service provision generally provide better access and higher quality family planning services, which is the purpose of the program.[20]

Under the proposed rule, all project recipients that do not provide the services directly must only choose subrecipients on the basis of their ability to effectively deliver Title X required services.[21] Non-profit project recipients that do not provide all services directly must also allow any qualified providers that can effectively provide services in a given area to apply to provide those services, and they may not continue or begin contracting (or subawarding) with providers simply because they are affiliated in some way that is unrelated to programmatic objectives of Title X. Project recipients that directly provide services will not be required to start awarding to subrecipients. For instance, some recipients provide services directly, meaning they directly operate the service sites, the business operations are controlled by the recipient, and the recipient directly controls the clinics (*e.g.,* clinic hours, staffing, etc.) and the delivery of services (*e.g.,* consistent clinical protocols throughout the system). This is the case for some public recipients, such as state health departments, as well as non-profits. For example, some state departments of health provide all services directly—the local and county health departments are considered part of the state, and the staff in the health departments are state health department staff. In comparison, some health departments make subawards to county health departments and/or non-profit agencies within their services network for the delivery of family planning services.

Under the proposed rule, a tiering structure—described above—would not be allowable unless it could be shown that the top tier provider (*e.g.,* community health center or other provider type) more effectively delivered Title X services than a lower tier provider. In addition, a preference for particular subspecialty providers would have to be justified by showing that they more effectively deliver Title X services. Furthermore, actions that favor 'comprehensive providers' would require justification that those providers are at least as effective as other subrecipients applying for funds. The proposed rule does not limit all types of providers from competing for subrecipient funds, but delimits the criteria by which a project recipient can allocate those funds based on the objectives in Title X.

The Department seeks comments on several issues. The Department is cognizant of administrative burdens on both itself and project recipients that could result from the proposed changes, as discussed further below in the Regulatory Impact Analysis, and seeks comment on how to minimize them. Additionally, the Department seeks input on whether other portions of the Title X rules might need to be amended to conform to this rule regarding the selection of subrecipients. We invite comments on the utility of requiring compliance reports or other records demonstrating a project recipient's criteria for selecting providers, or whether a complaint-driven process would promote the same goals more efficiently. Project recipients found out of compliance would have all the same rights to appeal adverse determinations under the proposed rule as they do any other agency decision. For example, after voluntary compliance avenues have failed and the Department determines to terminate the grant, grantees could appeal wrongful termination claims through the Departmental Appeals Board process. 42 CFR 59.10.

While the Department is also aware of the scope of the proposed rule, it does not believe it will interfere with other generally applicable state laws. If, for example, a state law requires certain wage rates, or addresses family leave or non-discrimination, this rule will not interfere with that law, since all subrecipients will be similarly situated as to that state law. Only those laws which directly distinguish among Title X providers for reasons unrelated to their ability to deliver services would be implicated, and then, only if the state chooses to continue to apply for funding. The Department seeks comment on the regulatory language and ways it may be seen as interacting with other state law provisions.

While specifically seeking comment on the issues outlined above, the Department invites comments on any other issues raised by the proposed regulation.

III. Regulatory Impact Analysis

A. Introduction

HHS has examined the impact of this proposed rule under Executive Order

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[16] Frost, J.J., Frowirth, L., & Zolna, M.R. Contraceptive Needs and Services, 2013 Update, Guttmacher Institute, July 2015.

[17] Lu, Y. and Slusky, D.J.G., "The Impact of Family Planning Cuts on Preventive Care," Princeton Center for Health and Wellbeing Working Paper, (May 20, 2014), available at *http://ssrn.com/abstract=2442148.*

[18] Texas Policy Evaluation Project, *Research Brief: Barriers to Family Planning Access in Texas* (May 2015), available at *http://www.utexas.edu/cola/orgs/txpep/_files/pdf/TxPEP-ResearchBrief_Barriers-to-Family-Planning-Access-in-Texas_May2015.pdf.*

[19] Effect of Removal of Planned Parenthood from the Texas Women's Health Program. (2016). New England Journal of Medicine N Engl J Med, 374(13), 1298–1298. doi:10.1056/nejmx160006.

[20] Carter, M.W., Gavin, L., Zapata, L.B., Bornstein, M., Mautone-Smith, N., & Moskosky, S.B. (2016). Four aspects of the scope and quality of family planning services in US publicly funded health centers: Results from a survey of health center administrators. Contraception. doi:10.1016/j.contraception.2016.04.009.

[21] Grant recipients would also continue to be subject to uniform grant rule requirements, 45 CFR 75.352.

12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, September 19, 1980), the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995), and Executive Order 13132 on Federalism (August 4, 1999).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in Executive Order 12866. HHS expects that this proposed rule will not have an annual effect on the economy of $100 million or more in at least 1 year. Therefore, this rule will not be an economically significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act (RFA) requires agencies that issue a regulation to analyze options for regulatory relief of small businesses if a rule has a significant impact on a substantial number of small entities. The RFA generally defines a "small entity" as (1) a proprietary firm meeting the size standards of the Small Business Administration; (2) a nonprofit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000 (States and individuals are not included in the definition of "small entity"). For similar rules, HHS considers a rule to have a significant economic impact on a substantial number of small entities if at least 5 percent of small entities experience an impact of more than 3 percent of revenue. HHS anticipates that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is $146 million, using the most current (2015) implicit price deflator for the gross domestic product. This proposed rule would not trigger the Unfunded Mandate Reform Act because it will not result in any expenditure by states or other government entities.

B. Summary of the Proposed Rule

Since 2011, 13 states have taken actions to restrict participation by certain types of providers as subrecipients in the Title X program based on factors unrelated to the providers' ability to provide the services required under Title X effectively. In at least several instances, this has led to disruption of services or reduction of services where a public entity, such as a state health department, holds a Title X grant and makes subawards to subrecipients for the provision of services. In response to these actions, this proposed rule requires that any Title X recipient subawarding funds for the provision of Title X services not prohibit a potential subrecipient from participating for reasons unrelated to its ability to provide services effectively.

C. Need for the Proposed Rule

Certain states have policies in place which limit access to high quality family planning services by restricting specific types of providers from participating in the Title X program. These policies, and varying court decisions on their legality, has led to uncertainty among grantees, inconsistency in program administration, and diminished access to services for Title X target populations. These restrictive state policies exclude certain providers for reasons unrelated to their ability to provide Title X services effectively. As a result of these state policies, providers previously determined by Title X grantees to be effective providers of family planning services have been excluded from participation in the Title X program. In turn, the exclusion of these high quality providers is associated with a reduction in the quality of family planning services, the number of Title X service sites, reduced geographic availability of Title X services, and fewer Title X clients served.[22] [23] This proposed regulation seeks to ensure that state policies regarding Title X do not direct funding to subrecipients for reasons other than their ability to meet the objectives of the Title X program.

Reducing access to Title X services has many adverse effects. Title X services have a dramatic effect on the number of unintended pregnancies and births in the United States. For example, services provided by Title X-funded sites helped prevent an estimated 1 million unintended pregnancies in 2010 which would have resulted in an estimated 501,000 unplanned births.[24] The Title X program also helps prevent the spread of STDs by providing screening and treatment.[25] The program helps reduce maternal morbidity and mortality, as well as low birth weight, premature birth, and infant mortality.[26] [27] Title X as it exists today is also very cost effective: Every grant dollar spent on family planning saves an average of $7.09 in Medicaid-related costs.[28]

In addition to reducing access to the Title X program, these policies may reduce the quality of Title X services, as described previously. Research has shown that providers with a reproductive health focus provide services that more closely align with the statutory and regulatory goals and purposes of the Title X Program. In particular, these entities provide a broader range of contraceptive methods on-site, are more likely to have written protocols that assist clients with initiating and continuing contraceptive use without barriers, disproportionately serve more clients in need of family planning services, and provide higher quality services as stipulated in national recommendations, "*Providing Quality Family Planning Services: Recommendations of CDC and the U.S. Office of Population Affairs.*"

Policies that eliminate specific reproductive health providers for reasons unrelated to their ability to provide the quality family planning services in an effective manner may shift funding from relatively high quality family planning service providers to providers of lower quality. This, in turn, can reduce access to high quality family planning services for the populations that need these services the most. This regulation takes the simplest approach to reverse the adverse effects of these policies that exclude certain reproductive health care providers for reasons unrelated to their ability to provide services effectively.

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[22] Fowler, CI, Lloyd, S, Gable, J, Wang, J, and McClure, E. (November 2012). Family Planning Annual Report: 2011 National Summary. Research Triangle Park, NC: RTI International.

[23] Fowler, C.I., Gable, J., Wang, J., & Lasater, B. (2015, August). Family Planning Annual Report: 2014 national summary. Research Triangle Park, NC: RTI International.

[24] Frost JJ, Zolna MR and Frohwirth L, Contraceptive Needs and Services, 2010, New York: Guttmacher Institute, 2013, <*http://www.guttmacher.org/pubs/win/contraceptive-needs-2010.pdf*>.

[25] Fowler, CI, Gable, J, Wang, J, and McClure, E. (November 2013). Family Planning Annual Report: 2012 National Summary. Research Triangle Park, NC: RTI International.

[26] Kavanaugh ML and Anderson RM, Contraception and Beyond: The Health Benefits of Services Provided at Family Planning Centers, New York: Guttmacher Institute, 2013 <*https://www.guttmacher.org/sites/default/files/report_pdf/health-benefits.pdf*>.

[27] Preconception Health and Reproductive Life Plan. (n.d.). Retrieved May 18, 2016, from *http://www.hhs.gov/opa/title-x-family-planning/initiatives-and-resources/preconception-reproductive-life-plan/*.

[28] Frost, J.J., Sonfield, A., Zolna, M.R., & Finer, L.B. (2014). Return on Investment: A Fuller Assessment of the Benefits and Cost Savings of the US Publicly Funded Family Planning Program. Milbank Quarterly, 92(4), 696–749. doi:10.1111/1468–0009.12080.

D. Analysis of Benefits and Costs

1. Benefits to Potential Title X Clients and Reduced Federal Expenditures

This proposed rule directly prohibits Title X recipients that subaward funds for the provision of Title X services from excluding an entity from participating for reasons unrelated to its ability to provide services effectively. Following the implementation of policies this regulation proposes to reverse, states shifted funding away from family planning service providers previously determined to be most effective. We believe that this proposed rule is likely to undo these effects, resulting in a shift toward service providers previously determined to be the most effective. To the extent that a state may come into compliance with this regulation by relinquishing its Title X grant or not applying for a Title X grant, other organizations could compete for Title X funding to deliver services in areas where a state entity previously subawarded funds for the delivery of Title X services. In turn, we expect that this will reverse the associated reduction in access to Title X services and deterioration of outcomes for affected populations.

Research has shown that every grant dollar spent on family planning saves an average of $7.09 in Medicaid-related expenditures.[29] In addition to reducing spending, these services improve health and quality of life for affected individuals, suggesting the return on investment to these family planning services is even higher. For example, these services reduce the incidence of invasive cervical cancer and sexually transmitted infections in addition to improving birth outcomes through reductions in preterm and low birth weight births.[30] Data show that specific provider types with a reproductive health focus have been shown to serve disproportionately more clients in need of publicly funded family planning services than do public health departments and federally qualified health centers (FQHCs).[31] Therefore, eliminating discrimination against certain providers is expected to result in an increased number of patients served and services delivered by the Title X program. We expect that the return on investment among higher quality, more efficient providers is even higher than the average return on investment discussed above, and that shifting funding away from these providers has reduced the return on investment to family planning services. We estimate that the changes proposed here will reduce unintended pregnancies, increase savings to Medicaid, and improve the health and wellbeing of many individuals across the country.

2. Costs to the Federal Government Associated With Disseminating Information About the Rule and Evaluating Grant Applications for Conformance With Policy

Following publication of a final rule that builds upon this proposal and public comments, OPA will work to educate Title X program recipients and applicants about the requirement to not prohibit a potential subrecipient from participating for reasons unrelated to its ability to provide services effectively. OPA will send a letter summarizing the change to current recipients of Title X funds and post the letter to its Web site. OPA will also add conforming language to its related forthcoming funding opportunity announcements (FOAs). OPA has existing channels for disseminating information to stakeholders. Therefore, based on previous experience, the Department estimates that preparing and disseminating these materials will require approximately one to three percent of a full-time equivalent OPA employee at the GS–12 step 5 level. Based on federal wage schedule for 2016 in the Washington, DC area, GS–12 step 5 level corresponds to an annual salary of $87,821. We double this salary cost to account for overhead and benefits. As a result, we estimate a cost of approximately $1,800—$5,300 to disseminate information following publication of the final rule.

3. Grant Recipient Costs To Evaluate and Implement the Policy Change

We expect that, if this proposed rule is finalized, stakeholders including grant applicants and recipients potentially affected by this proposed policy change will process the information and decide how to respond. This change will not affect the majority of current recipients, and as a result the majority of current recipients will spend very little time reviewing these changes before deciding that no change in behavior is required. For the states that currently hold Title X grants and have laws or policies restricting Title X subrecipients, the final rule would implicate state law or policy. State agencies that currently restrict subawards would need to carefully revise their current practices in order to comply with these changes.

We estimate that current and potential recipients will spend an average of one to two hours processing the information and deciding what action to take. We note that individual responses are likely to vary, as many parties unaffected by these changes will spend a negligible amount of time in response to these changes. According to the U.S. Bureau of Labor Statistics,[1] the average hourly wage for a chief executive in state government is $54.26, which we believe is a good proxy for the individuals who will spend time on these activities. After adjusting upward by 100 percent to account for overhead and benefits, we estimate that the per-hour cost of a state government executive's time is $108.52. Thus, the average cost per current or potential grant recipient to process this information and decide upon a course of action is estimated to be $108.52–$217.04. OPA will disseminate information to an estimated 89 Title X grant recipients. As a result, we estimate that dissemination will result in a total cost of approximately $9,700–$19,300.

4. Summary of Impacts

Public funding for family planning services is likely to shift to providers that see a higher number of patients and provide higher quality services. Increases in the quantity and quality of Title X service utilization will lead to fewer unintended pregnancies, improved health outcomes, reduced Medicaid costs, and increased quality of life for many individuals and families. The proposed rule's impacts will take place over a long period of time, as it will allow for the continued flow of funding to provide family planning services for those most in need, and it will prevent future attempts to provide Title X funding to subrecipients for reasons other than their ability to best meet the objectives of the Title X program.

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[29] Frost, J.J., Sonfield, A., Zolna, M.R., & Finer, L.B. (2014). Return on Investment: A Fuller Assessment of the Benefits and Cost Savings of the US Publicly Funded Family Planning Program. Milbank Quarterly, 92(4), 696–749. doi:10.1111/1468–0009.12080.

[30] Frost, J.J., Sonfield, A., Zolna, M.R., & Finer, L.B. (2014). Return on Investment: A Fuller Assessment of the Benefits and Cost Savings of the US Publicly Funded Family Planning Program. Milbank Quarterly, 92(4), 696–749. doi:10.1111/1468–0009.12080.

[31] Frost JJ, Zolna MR and Frohwirth L, Contraceptive Needs and Services, 2010, New York: Guttmacher Institute, 2013, <*http://www.guttmacher.org/pubs/win/contraceptive-needs-2010.pdf*>.

We estimate costs of $11,400–$24,600 in the first year following publication of the final rule, and suggest that this rule is beneficial to society in increasing access to and quality of care. We note that the estimates provided here are uncertain.

E. Analysis of Regulatory Alternatives

We carefully considered the option of not pursuing regulatory action. However, as discussed previously, not pursuing regulatory action means allowing the continued provision of Title X funds to subrecipients for reasons other than their ability to provide high quality family planning services. This, in turn, means accepting reductions in access to and quality of services to populations who rely on Title X. As a result, we chose to pursue regulatory action.

F. Executive Order 13132 Federalism Review

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has federalism implications. The Department particularly invites comments from states and local governments, and will consult with them as needed in promulgating the final rule. While we do not believe this rule will cause substantial economic impact on the states, it will implicate some state laws if states wish to apply for federal Title X funds. Therefore, the following federalism impact statement is provided.

E.O. 13132 establishes the need for Federal agency deference and restraint in taking action that would curtail the policy-making discretion of the states or otherwise have a substantial impact on the expenditure of state funds. The proposed rule simply sets the conditions to be eligible for federal funding for both public and private entities. The proposed rule will not have a significant impact on state funds as, by law, project grants must be funded with at least 90 percent federal funds. 42 U.S.C. 300a–4(a). Furthermore, states that are the project recipients of Title X grants are not required to issue subawards at all. However, those that choose to do so would be required to do so in a manner that considers only the ability of the subrecipients to meet the statutory objectives.

States remain entirely free to set their policies and funding preferences as to family planning services paid for with state funds. While this proposed rule will eliminate the ability of states to restrict subawards with Title X funds for reasons unrelated to the statutory objectives of Title X, they remain free to set their own preferences in providing state-funded family planning services. The rule does not impose any additional requirements on states in their performance under the Title X grant, other than to avoid discrimination in making subawards, should they choose to make such subawards. And states remain free to apply for federal program funds, subject to the eligibility conditions. For the reasons outlined above, the proposed rule is designed to achieve the objectives of Title X related to providing effective family planning services to program beneficiaries with the minimal intrusion on the ability of project recipients to select their subrecipients.

G. Paperwork Reduction Act of 1995

The amendments proposed in this rule will not impose any additional data collection requirements beyond those already imposed under the current information collection requirements which have been approved by the Office of Management and Budget.

List of Subjects in 42 CFR Part 59

Birth control, Family planning, Grant programs.

Dated: August 31, 2016.

Sylvia M. Burwell,

Secretary.

Therefore, under the authority of section 1006 of the Public Health Service Act as amended, and for the reasons stated in the preamble, the Department proposes to amend 42 CFR part 59 as follows:

PART 59—GRANTS FOR FAMILY PLANNING SERVICES

Subpart A—Project Grants for Family Planning Services

■ 1. The authority citation for subpart A continues to read as follows:

Authority: 42 U.S.C. 300a–4.

■ 2. Section 59.3 is revised to read as follows:

§ 59.3 Who is eligible to apply for a family planning services grant or to participate as a subrecipient as part of a family planning project?

(a) Any public or nonprofit private entity in a State may apply for a grant under this subpart.

(b) No recipient making subawards for the provision of services as part of its Title X project may prohibit an entity from participating for reasons unrelated to its ability to provide services effectively.

[FR Doc. 2016–21359 Filed 9–2–16; 4:15 pm]

BILLING CODE 5140–34–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 227, and 252

[Docket DARS–2016–0017]

RIN 0750–AI95

Defense Federal Acquisition Regulation Supplement: Rights in Technical Data and Validation of Proprietary Data Restrictions (DFARS Case 2012–D022)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule; extension of comment period.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2012 that revises the sections of title 10 of the United States Code (U.S.C.) that address technical data rights and validation of proprietary data restrictions. The comment period on the proposed rule is extended 16 days.

DATES: For the proposed rule published on June 16, 2016 (81 FR 39481), submit comments by September 30, 2016.

ADDRESSES: Submit comments identified by DFARS Case 2012–D022, using any of the following methods:

○ *Federal eRulemaking Portal: http://www.regulations.gov.* Search for "DFARS Case 2012–D022." Select "Comment Now" and follow the instructions provided to submit a comment. Please include "DFARS Case 2012–D022" on any attached documents.

○ *Email: osd.dfars@mail.mil.* Include DFARS Case 2012–D022 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy

Williams, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Amy G. Williams, telephone 571–372–6106.

SUPPLEMENTARY INFORMATION:

I. Background

On June 16, 2016, DoD published a proposed rule in the **Federal Register** at 81 FR 39481 to implement section 815 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2012, which—

- Adds special provisions for handling technical data that are necessary for segregation and reintegration activities;
- Codifies and revises the policies and procedures regarding deferred ordering of technical data necessary to support DoD major systems or subsystems, weapon systems, or noncommercial items or processes;
- Expands the period in which DoD can challenge an asserted restriction on technical data from 3 years to 6 years;
- Rescinds changes to 10 U.S.C. 2320 from the NDAA for FY 2011; and
- Codifies Government purpose rights as the default rights for technical data related to technology developed with mixed funding.

The comment period for the proposed rule is extended 16 days, from September 14, 2016 to September 30, 2016, to provide additional time for interested parties to comment on the proposed DFARS changes.

List of Subjects in 48 CFR Parts 212, 227, and 252

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2016–21463 Filed 9–6–16; 8:45 am]

BILLING CODE 5001–06–P

SURFACE TRANSPORTATION BOARD

49 CFR Chapter X

[Docket No. EP 665 (Sub–No. 1); Docket No. EP 665 (Sub–No. 2)]

Rail Transportation of Grain, Rate Regulation Review; Expanding Access to Rate Relief

AGENCY: Surface Transportation Board.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Surface Transportation Board (Board) is seeking comments and suggestions through this Advance Notice of Proposed Rulemaking (ANPR) regarding the Board's effort to develop a new rate reasonableness methodology for use in very small disputes, which would be available to shippers of all commodities.

DATES: Comments are due by November 14, 2016. Reply comments are due by December 19, 2016.

ADDRESSES: Comments and replies may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the "E-FILING" link on the Board's Web site, at "*http://www.stb.dot.gov.*" Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: Docket No. EP 665 (Sub–No. 2), 395 E Street SW., Washington, DC 20423–0001.

Copies of written comments and replies will be posted to the Board's Web site and will be available for viewing and self-copying at the Board's Public Docket Room, Room 131. Copies will also be available (for a fee) by contacting the Board's Chief Records Officer at (202) 245–0238 or 395 E Street SW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Allison Davis at (202) 245–0378. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: In the Interstate Commerce Act, Congress charged the Board with protecting the public from unreasonable pricing by freight railroads, while fostering a sound, safe, and efficient rail transportation system by allowing carriers to earn adequate revenues. *See* 49 U.S.C. 10101. In the Staggers Rail Act of 1980, Public Law 96–448, 94 Stat. 1895, and subsequent legislation, including the ICC Termination Act of 1995 (ICCTA), Public Law 104–88, 109 Stat. 803, Congress established a careful balance between these two important yet conflicting goals. On the one hand, Congress permitted differential pricing and removed regulatory controls over railroad pricing for traffic with effective competition so that carriers would have greater ability to earn the revenues necessary to attract capital and reinvest in the network. On the other hand, Congress made clear that railroad rates for traffic without effective competition must be reasonable (*see* 49 U.S.C. 10702, 10707), and that shippers of grain, in particular, are entitled to some additional protections (*see, e.g.,* 49 U.S.C. 10709(g) (providing that shippers may file a complaint with the Board asking it to review agricultural contracts on certain grounds)).

By decision served in *Rail Transportation of Grain, Rate Regulation Review,* Docket No. EP 665 (Sub–No. 1) on December 12, 2013, the Board invited public comment on how to ensure that the Board's existing rate complaint procedures are accessible to grain shippers and provide effective protection against unreasonable freight rail transportation rates, including proposals for modifying existing procedures or new alternative rate relief methodologies. The Board received opening and reply comments from interested shipper, railroad, and government entities. The Board then held a public hearing on June 10, 2015, to further examine issues related to the accessibility of rate relief for grain shippers and to provide interested persons the opportunity to comment on the suggestions made during the public comment period. Following the hearing, the Board received supplemental comments from three parties.

The Board has considered all of the written comments and oral testimony received in Docket No. EP 665 (Sub–No. 1).[1] A number of issues raised during the public comment period—related to the accessibility of the Board's existing rate review processes, modifications to those processes, and alternative rate review processes set forth by parties—merit further discussion, and the Board is seeking further comment on those issues.[2] Based on the comments and testimony received, the Board believes that the existing rate review processes present accessibility challenges for not only grain shippers, but also small shippers of any commodity. The Board also recognizes that for small rate disputes, regardless of commodity, the litigation costs required to bring a case under the Board's existing rate reasonableness methodologies can quickly exceed the value of the case. Therefore, the Board is opening a proceeding in Docket No. EP 665 (Sub–No. 2) to develop a new rate review process that would be more affordable and accessible to shippers of all commodities with small disputes.

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[1] For a list of the numerous parties that have participated in Docket No. EP 665 (Sub–No. 1) at various stages, see Appendix A. To the extent this decision refers to parties by abbreviations, those abbreviations are listed in that appendix.

[2] We note that other significant issues have been raised in this proceeding, such as the Board's regulations concerning agricultural rate transparency and the standing required to bring a rate complaint. The Board will address these issues in a subsequent decision.

Before discussing ideas for use in a new rate reasonableness methodology, we will discuss the Board's existing rate reasonableness standards and the comments received in Docket No. EP 665 (Sub–No. 1).

Current Rate Reasonableness Standards

Statutory Framework

Where a railroad has market dominance—*i.e.,* there is an absence of effective competition from other rail carriers or modes of transportation—its transportation rates for common carrier service must be reasonable. 49 U.S.C. 10701(d)(1), 10702, 10707(a). The Board is precluded, however, from finding market dominance if the revenues produced by a challenged rate are less than 180% of the carrier's "variable costs" [3] of providing the service. 49 U.S.C. 10707(d)(1)(A). If, upon complaint, the Board finds a challenged rate unreasonable, it will order the railroad to pay reparations to the complainant for past movements and may prescribe the maximum rate the carrier is permitted to charge. 49 U.S.C. 10704(a)(1), 11704(b).

In carrying out its regulatory functions, the Board is guided by the rail transportation policy set forth at 49 U.S.C. 10101. And in assessing the reasonableness of rail rates, it must also give due consideration to the "Long-Cannon" factors contained in 49 U.S.C. 10701(d)(2)(A)–(C). The Board must recognize that rail carriers should have an opportunity to earn "adequate revenues," which are defined as those that are sufficient—under honest, economical, and efficient management—to cover operating expenses, support prudent capital outlays, repay a reasonable debt level, raise needed equity capital, and otherwise attract and retain capital in amounts adequate to provide a sound rail transportation system. 49 U.S.C. 10701(d)(2), 10704(a)(2).

As part of ICCTA, Congress added a new provision to the rail transportation policy calling for the "expeditious handling and resolution of all proceedings." 49 U.S.C. 10101(15). Congress further instructed the Board to establish procedures for rail rate challenges in particular, including "appropriate measures for avoiding delay in the discovery and evidentiary phases of such proceedings." 49 U.S.C. 10704(d). Congress directed the Board to "establish a simplified and expedited method for determining the reasonableness of challenged rail rates in those cases in which a full stand-alone cost presentation is too costly, given the value of the case." 49 U.S.C. 10701(d)(3). In the Surface Transportation Board Reauthorization Act of 2015, Public Law 114–110, 129 Stat. 2228 (2015), Congress directed the Board to "initiate a proceeding to assess procedures that are available to parties in litigation before courts to expedite such litigation and the potential application of any such procedures to rate cases." 129 Stat. 2228. That proceeding is currently pending before the Board. *See Expediting Rate Cases,* EP 733 (STB served June 15, 2016).

Regulatory Framework

Under the theory of "constrained market pricing" (CMP), adopted by the agency in 1985 to judge the reasonableness of rail freight rates, a captive shipper should not be required to pay more than is necessary for the carrier involved to earn adequate revenues, nor should it pay more than is necessary for efficient service, and a captive shipper should not bear the costs of any facilities or services from which it derives no benefit. *Coal Rate Guidelines, Nationwide* (*Guidelines*), 1 I.C.C.2d 520, 523 (1985), *aff'd sub nom. Consol. Rail Corp.* v. *United States,* 812 F.2d 1444 (3d Cir. 1987). CMP contains three main limits on the extent to which a railroad may charge differentially higher rates on captive traffic: The revenue adequacy constraint, the management efficiency constraint, and the stand-alone cost constraint.[4] Of these three limits under CMP, the stand-alone cost (SAC) constraint has been the most widely utilized before the agency.

A SAC analysis seeks to determine whether a complainant is bearing costs resulting from inefficiencies or costs associated with facilities or services from which it derives no benefit. The SAC analysis does this by simulating the competitive rate that would exist in a "contestable market." [5] Under the SAC constraint, the rate at issue cannot be higher than what a hypothesized stand-alone railroad (SARR) would need to charge to serve the complaining shipper while fully covering all of its costs, including a reasonable return on investment. The principal objective of the SAC approach is to restrain a railroad from exploiting market power over a captive shipper by charging more than it needs to earn a reasonable return on the cost of the infrastructure used to serve that shipper. A second objective of the SAC constraint is to detect and eliminate the costs of inefficiencies in a carrier's investments or operations. *See id.* at 542–46.

The agency recognized that the SAC methodology adopted in *Guidelines* could be expensive and impractical for certain shippers. The agency therefore adopted in 1996 a simplified methodology, the Three-Benchmark methodology, under which the reasonableness of a challenged rated is determined by examining that rate in relation to three benchmark figures. *Rate Guidelines—Non-Coal Proceedings,* 1 S.T.B. 1004 (1996), *pet. to reopen denied,* 2 S.T.B. 619 (1997), *appeal dismissed sub nom. Ass'n of Am. R.Rs.* v. *STB,* 146 F.3d 942 (D.C. Cir. 1998). A decade passed, however, without any shipper bringing a case under that methodology. Accordingly, in 2007, the Board modified the Three-Benchmark test and created Simplified-SAC—a simplified alternative under CMP where a full SAC analysis was too costly given the value of the case. *See Simplified Standards for Rail Rate Cases,* EP 646 (Sub–No. 1) (STB served Sept. 5, 2007), *aff'd sub nom. CSX Transp., Inc.* v. *STB,* 568 F.3d 236 (D.C. Cir.), *vacated in part on reh'g,* 584 F.3d 1076 (D.C. Cir. 2009).

In *Simplified Standards,* EP 646 (Sub–No. 1), slip op. at 13, the Board acknowledged that it is the second objective—in which the complaint seeks to detect and eliminate the cost of inefficiencies in carrier's investments or operations—that turns the case into an intricate, expensive undertaking. Accordingly, the Board limited the inquiry under the Simplified-SAC method to the first objective of SAC: whether a captive shipper is being forced to cross-subsidize other parts of the railroad's rail network. The Simplified-SAC test does so by comparing the costs and revenues of the actual operations and services provided under the assumption that all existing infrastructure along the predominant route used to haul the complainant's traffic is needed to serve the traffic on that route. *Rate Regulation Reforms,* EP 715, slip op. at 1 n.2 (STB served Mar. 13, 2015); *see also Simplified Standards,* EP 646 (Sub–No. 1), slip op. at 5. The core analysis in a Simplified-SAC proceeding addresses the cost to build the existing facilities used to serve the captive shipper and the return on investment a hypothetical SARR would require to replicate those facilities. The Board then determines whether the traffic using those facilities is paying more than needed to cover operating expenses and a reasonable return on the cost of those facilities. To hold down the cost of a Simplified-SAC presentation, various simplifying assumptions and standardization measures were adopted.[6] Such an approach is a less thorough application of CMP in that it would not identify inefficiencies in the current rail operation.

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[3] Variable costs vary with the level of traffic and are developed in rate proceedings using the Board's Uniform Railroad Costing System (URCS). *See Adoption of Unif. R.R. Costing Sys. as Gen. Purpose Costing Sys. for All Regulatory Costing Purposes,* 5 I.C.C.2d 894 (1989).

[4] A fourth constraint—phasing—is intended to limit the introduction of otherwise-permissible rate increases when necessary for the greater public good. *Guidelines,* 1 I.C.C.2d at 546–47. For a more detailed discussion of CMP, see *Guidelines,* 1 I.C.C.2d at 534–547.

[5] A contestable market is defined as one that is free from barriers to entry. *See Guidelines,* 1 I.C.C.2d at 528 (citing William J. Baumol, John C. Panzar & Robert D. Willig, *Contestable Markets and the Theory of Industry Structure* (1982)). The economic theory of contestable markets does not depend on a large number of competing firms in the marketplace to ensure a competitive outcome. *Guidelines,* 1 I.C.C.2d at 528. In a contestable market, even a monopolist must offer competitive rates or potentially lose its customers to a new entrant. *Id.*

Under the Three-Benchmark method, the reasonableness of a challenged rate is determined by examining that rate in relation to the following three benchmark figures, each of which is expressed as a revenue-to-variable cost (R/VC) ratio: (1) Revenue Shortfall Allocation Method (RSAM), which measures the average markup over variable cost that the defendant railroad would need to charge all of its "potentially captive" traffic (traffic priced above the 180% R/VC level) in order for the railroad to earn adequate revenues as measured by the Board under 49 U.S.C. 10704(a)(2); (2) $R/VC_{>180}$, which measures the average markup over variable cost currently earned by the defendant railroad on its potentially captive traffic; and (3) R/VC_{COMP}, which is used to compare the markup being paid by the challenged traffic to the average markup assessed on other comparable potentially captive traffic. *Rate Regulation Reforms,* EP 715, slip op. at 11 (STB served July 25, 2012).

In Three-Benchmark cases, each party simultaneously proposes an initial comparison group, and, after critiquing the other side's proposal, a "final offer" comparison group. After receiving simultaneous rebuttal filings, the Board selects without adjustment one of the two "final offer" comparison groups. Each movement in the comparison group is adjusted by a revenue need adjustment factor, which is the ratio of $RSAM \div R/VC_{>180}$ (each of which is a four-year average calculation). The Board then calculates the mean and standard deviation of the resulting adjusted R/VC ratios (weighted in accordance with the proper sampling factors). If the challenged rate is above a reasonable confidence interval around the estimate of the mean for the adjusted comparison group, it is presumed unreasonable and, absent any "other relevant factors," the maximum lawful rate is prescribed at that boundary level. *See Simplified Standards,* EP 646 (Sub–No. 1), slip op. at 21.

Since *Simplified Standards,* only a few Three-Benchmark cases have been decided by the Board, while no complaint has been litigated to completion under the Simplified-SAC alternative.

There is no monetary limit on relief for a complainant that elects to use the SAC or Simplified-SAC methods, *see Rate Regulation Reforms,* EP 715, slip op. at 3 (STB served July 18, 2013) (removing relief limit on Simplified-SAC cases), though rate relief in SAC cases is limited to a 10 year period, *see Major Issues in Rail Rate Cases,* EP 657 (Sub–No. 1), slip op. at 62–66 (STB served Oct. 30, 2006), and relief in Simplified-SAC cases is limited to a five-year period, *Simplified Standards,* EP 646 (Sub–No. 1), slip op. at 27–29. The maximum potential rate relief available to a complainant that elects to use the Three-Benchmark method is limited to no more than $4 million per case over a five-year period. *See Rate Regulation Reforms,* EP 715, slip op. at 2 (STB served Mar. 13, 2015); *Simplified Standards,* EP 646 (Sub–No. 1), slip op. at 27–29.

Comments Received in Docket No. EP 665 (Sub–No. 1)

The shipper community argues that the Board's current rate review processes are not useable to test the reasonableness of agriculture commodity rail rates. Shippers argue that the Board's existing methodologies are cost-prohibitive. (ARC Opening 21–22; NGFA Opening 13–15; AAI Reply 2.) For example, NGFA argues that even the simplest of the Board's rate reasonableness methodologies, the Three-Benchmark approach, is ineffective because railroad defendants raise numerous expert-intensive "other relevant factor" arguments and arguments for the use of current waybill data in the possession of the defendant railroad, which greatly increase the complexity and costs of those cases. (NGFA Opening 15.)

Even if the Three-Benchmark methodology were not cost prohibitive, shippers argue that a comparison group approach is ineffective for agricultural commodities because carriers have applied "across-the-board" pricing. (ARC Opening 23; NGFA Opening 15; AAI Reply 2.) Specifically, shippers claim that carriers use their market power to impose a uniformly high rate across-the-board for certain commodities or groups of commodities. (ARC Opening 23; NGFA Opening 15.) As a result, shippers argue that the R/VC_{COMP} benchmark is inherently problematic for grain shippers and producers because railroad grain rates generally produce R/VCs that are uniform, or uniform in geographic areas, for states or regions. (ARC Opening 23, V.S. Whiteside 12.) According to NGFA, the fact that only defendant traffic may be included in a Three-Benchmark comparison group compounds this flaw. (NGFA Opening 15.)

NGFA also argues that SAC and Simplified-SAC are inaccessible because many grain shippers are on low-density rural branch lines or secondary lines, and the Board's holding regarding cross-subsidies in *PPL Montana, LLC* v. *Burlington Northern & Santa Fe Railway,* NOR 42054 (STB served Aug. 20, 2002) and *Otter Tail Power Co.* v. *BNSF Railway,* NOR 42058, slip op. at 11–13 (STB served Jan. 27, 2006) have essentially eliminated the ability for grain shippers to use SAC rules to test the reasonableness of rates for agricultural commodities. (NGFA Opening 13–14, 21.)

Shippers propose both modifications to the existing methodologies and new processes for rate review. Regarding the existing methodologies, several shipper groups argue for changes to the Three-Benchmark methodology. ARC argues that the comparison groups in the Three-Benchmark method should include non-defendant traffic for grain and grain products shippers because limiting comparison groups to defendant traffic eliminates a significant amount of traffic with similar demand characteristics. (ARC Opening 22–23,

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[6] Simplifying assumptions are used in, for example, the issue traffic's route, the configuration of the SARR, the traffic group, operating expenses, the test year, and the discounted cash flow analysis.

V.S. Fauth 23.)[7] NGFA and ARC both argue that expanding the comparable traffic group to include non-defendant traffic would also address "across-the-board" pricing practices. (ARC Opening 23; NGFA Opening 15, 28, V.S. Crowley 9–11.) As NGFA notes, the inclusion of non-defendant traffic in a comparison group approach would establish a "market" rate, and thereby address, to some extent, the current practice of the Class I railroads to limit the ability of a captive shipper or a group of captive shippers to reach desired markets by setting rail rates that largely dictate where the shipper's commodity goes on that railroad's system. (NGFA Opening 28, V.S. Crowley 9–11.)

Shippers also argue that comparison groups in the Three-Benchmark methodology should include non-captive traffic, *i.e.,* traffic priced below the 180% R/VC level.[8] (ARC Opening 23–24, V.S. Fauth 23–24; NGFA Opening 29.) According to NGFA, including movements with R/VC ratios below 180% is essential because captive agriculture commodity producers and elevators compete in the marketplace against other agriculture commodity shipments with rates both above and below the 180% R/VC threshold. (NGFA Opening 29.) Likewise, ARC argues that restricting the comparison group to traffic moving at an R/VC ratio greater than 180% significantly reduces the amount of traffic available for the comparison group because the majority of grain and grain products move at R/VC levels below 180%. (ARC Opening 23, V.S. Fauth 23–24.)

In addition, ARC proposes two adjustment factors that the Board could apply in rate challenges related to grain shipments. First, it proposes a Grain Cost Adjustment Factor (GCAF), which would be applied to the Board's URCS Phase III costing program for railroad movements of grain and grain products. ARC claims the GCAF would more accurately reflect the fact that these movements generally have certain lower costs than the system average costs, including switching, crew, locomotive, and car costs. (ARC Opening, V.S. Fauth 7.) ARC also proposes an export grain rate adjustment that takes into account the economic relationship between grain prices and grain exports. (ARC Opening, V.S. Fauth 30–31.)

ARC and NGFA also each propose new rate review processes. ARC sets forth a "Two-Benchmark" approach for revenue adequate railroads, which would eliminate the R/VC_{COMP} benchmark (and rely only on the RSAM and $R/VC_{>180}$ benchmarks by carrier).[9] According to ARC's witness, the R/VC_{COMP} benchmark is designed to reflect demand-based differential pricing and is inappropriate under the revenue adequacy constraint announced many years ago in *Guidelines,* 1 I.C.C.2d at 520. (ARC Opening, V.S. Fauth 25.) ARC, therefore, argues that the R/VC_{COMP} benchmark should have no application in assessing the rates of revenue adequate carriers because it provides a means of reflecting demand-based differential pricing principles and differential pricing should not affect rates on captive traffic to the extent those rates provide revenues above revenue adequacy levels. (ARC Opening 17–19.) Under ARC's proposed Two-Benchmark test, if grain shippers have rates which generate R/VC ratios in excess of the 180%, then the R/VC ratio could not exceed the RSAM level. (ARC Opening, V.S. Fauth 26.)

NGFA proposes an alternative method called the Ag Commodity Maximum Rate Methodology (ACMRM). (NGFA Opening 27–31, V.S. Crowley 6–17.) Under ACMRM, the issue traffic would be compared against all railroads (not just the defendant railroad) and movements with R/VC ratios less than 180% (although, the maximum reasonable rate produced by the analysis would be subject to the statutory 180% floor). (NGFA Opening 28–29, V.S. Crowley 9–11.) Under NGFA's proposal, the comparison group would be based on certain default factors, including a mileage band, commodity type, railcar type, railcar ownership, and movement type. (NGFA Opening, V.S. Crowley 6–7.) ACMRM also would eliminate the confidence interval adjustment and the "other relevant factors" analysis so that captive agriculture commodity rate cases could be decided quickly and at reasonable cost. (NGFA Opening 31.) The rate prescription period would be 5 years, and there would be no limits on the amount of relief that the complaining shipper or group of shippers could receive if a rate challenge is successful. (NGFA Opening 31.) ACMRM also includes a commodity-specific Revenue Adequacy Adjustment Factor, which would be used to adjust the R/VC ratio of each movement in the comparison group to account for the revenue adequacy status of each railroad. (NGFA Opening 31.)[10]

Carriers, on the other hand, argue that grain rates are not unreasonable and the Board's existing rules provide ample opportunity for grain shippers to pursue rate relief. (BNSF Opening 1, 26–29; UP Opening 19–20.) Carriers cite the lack of grain rate litigation as evidence that most grain rates are reasonable or not subject to the Board's jurisdiction (R/VC ratios below 180%, contract movements, or exempt commodities). (BNSF Opening 26–29; UP Opening 20; AAR Reply 9–10; CSXT Reply 4; NSR Reply 24–25.) According to carriers, rail rates for grain are effectively constrained by competition from truck, barge, and other railroads, as well as by the competitive global market for grain sales. (BNSF Opening 17–23, 27–29; UP Opening 15–20; CSXT Reply 2–3.)

Carriers also argue that the Board has already sufficiently addressed shippers' concerns by limiting its market dominance inquiry to direct competition (*i.e.,* not allowing product or geographic competition), creating two simplified rate reasonableness methodologies, and eliminating or increasing the relief caps for those methodologies. (AAR Opening 18–19; BNSF Opening 24–26; UP Opening 20; CSXT Reply 8.) CSXT notes that the Board also eliminated the use of movement-specific adjustments to URCS to reduce litigation costs. (CSXT Reply 6 (citing *Major Issues,* EP 657 (Sub–No. 1), slip op. at 59–60).) BNSF and CSXT also dispute the shippers' allegations that railroads impose uniformly high rates for certain commodities or groups of commodities. (BNSF Reply 14–15; CSXT Reply 8–9.) According to BNSF, shippers' concerns about broad, industry-wide rate increases are purely speculative and inconsistent with market realities. (BNSF Reply 14.)

Generally, carriers advocate maintaining the Board's current rate review processes and ask the Board to reject the modifications and alternatives set forth by the shipper community. (*See* AAR Opening 18; BNSF Opening 24–26; NSR Opening 6; UP Opening 2.) Carriers argue that NGFA's proposal would result in a "ratcheting effect," whereby, through repeated successful rate challenges, rates charged to captive shippers could be systematically lowered to the jurisdictional floor. (BNSF Reply 21, 24–25; NSR Reply 14–15; UP Reply 23–24.) Carriers also argue that the Board should reject NGFA's proposal because the methodology is not supported by sound economics and is inherently biased for grain shippers. (CSXT Reply 2, 10; NSR Reply 13–14.) According to CSXT, NGFA's proposal would eliminate demand-based differential pricing for grain traffic, prevent the Board from determining appropriate contribution to fixed costs, and "adjust" URCS in ways that would blatantly favor grain shippers over other shippers. (CSXT Reply 10–11.) Carriers also oppose the unlimited relief available under ACMRM. (BNSF Reply 29; UP Reply 34–35.)

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[7] NGFA also includes non-defendant traffic in its proposed new methodology, which is discussed in more detail below.

[8] NGFA also incorporates traffic with R/VC ratios below 180% into its proposed new methodology, which is discussed in more detail below.

[9] As indicated earlier, ARC also proposes to expand the comparison group in Three-Benchmark cases to include both non-defendant traffic and traffic moving at an R/VC ratio below 180%. (ARC Opening 20–24.)

[10] The formula for determining the RAAF is set forth in Exhibit 5 of the verified statement of Crowley. (NGFA Opening, V.S. Crowley Exhibit 5.)

Carriers also find flaws in ARC's proposal. Specifically, they argue that ARC's proposal would create a disincentive for railroads to expand competitive traffic through good business practices and would result in an overall degradation of rail service, contrary to the public interest. (AAR Reply 21–22; BNSF Reply 31; UP Reply 21–22, 37.) UP further argues that ARC's proposal is inconsistent with the competitive market principles embodied in the Board's governing statute and with basic railroad economics because it disregards the railroad's need for differential pricing to recover their joint and common costs. (UP Reply 35; *see also* AAR Reply 16.)

The carriers also argue that modifications to the Three-Benchmark approach, such as inclusion of non-defendant or non-captive traffic in the comparison group, lack sound economic support. Railroads dispute the idea of including non-defendant traffic in comparison groups, arguing that comparisons that include traffic moving on other railroads do not accurately establish the appropriate contribution to the defendant railroad's fixed costs. (AAR Reply 17–18; BNSF Reply 27.) BNSF further argues that including all traffic in the proposed comparison group eliminates a railroad's ability to engage in differential pricing, contrary to the basic economics of the railroad industry. (BNSF Reply 23.) NSR notes that expanding the comparison group would not simplify rate reasonableness determinations, but rather would increase the cost and complexity of the Three-Benchmark approach by requiring examination and evidence based on rates and costing from other railroads. (NSR Reply 29.)

Likewise, carriers oppose the inclusion of non-captive traffic in the comparison group. According to NSR, there is no basis for comparing traffic over which the railroad is potentially market dominant to traffic over which the railroad is not market dominant by statute. (NSR Reply 17.) According to BNSF and UP, by seeking to include in the comparison group traffic with competitive alternatives, NGFA seeks to eliminate a railroad's ability to engage in differential pricing, contrary to the basic economics of the railroad industry. (BNSF Reply 23; UP Reply 24–26.) According to BNSF and UP, including movements with R/VC ratios below 180% in the comparison group will also lead to a ratcheting down of R/VC ratios until the 180% R/VC ratio becomes the rate ceiling. (BNSF Reply 24–25; UP Reply 23–24.)

USDA also provided comment, arguing that a new approach is necessary and warranted, and should be explored, and that agricultural shippers require specifically designed rail rate challenge procedures. (USDA Opening 2.) USDA argues that none of the current rail rate appeals procedures are suitable for agricultural shippers because they are much too costly, complex, and time consuming, and agricultural shippers do not move large enough quantities to justify the cost of these procedures. (*Id.* at 6.) USDA also argues that, by the time a decision could be rendered, the routes or rates may have changed to fit new agricultural market conditions, nullifying most of the benefits from winning the case. (*Id.*) USDA estimates that a rate reasonableness methodology must have costs no greater than $50,000 in order to be a viable option for agriculture shippers. (*Id.* at 7–8.)

Based on the comments and testimony received in this proceeding, the Board is persuaded that the existing rate review processes present accessibility challenges not only for small shippers of grain, but also for small shippers of any commodity. The Board recognizes that, for small disputes, the litigation costs required to bring a case under the Board's existing rate reasonableness methodologies, even the Board's most simplified method, Three-Benchmark, can quickly exceed the value of the case. The Board appreciates receiving the alternative methodologies proposed by ARC and NGFA; however, we are not convinced that the alternative methodologies as proposed strike the proper balance between the Board's statutory goals of providing captive shippers meaningful access to regulatory remedies for unreasonable rail rates, while permitting railroads to earn a reasonable return on their investments so that they will have the resources to make the investment needed to continue to serve the transportation needs of their customers.

Although the Board has concerns with the proposals set forth by ARC and NGFA, several of the ideas that parties have raised as part of these methodologies, or on how to modify the Three-Benchmark methodology, warrant further exploration. In particular, if the Board could develop a process that reduces the litigation burden on parties even more than the simplest existing rate reasonableness methodology, it could achieve the goal of creating more accessible rate review processes for small disputes where even a Three-Benchmark case would be too costly, given the value of the case. Accordingly, we are considering developing a set of procedures that could comprise a new comparison-based rate reasonableness methodology for use by shippers of all commodities in very small disputes. The Board is considering a new process that would entail the following key elements.

First, the process would include a preliminary screen that would limit its application to shippers that are more likely to be considered captive and to have rates that are outliers. Such a screen might allow for the Board to make market dominance and rate reasonableness determinations based on an abbreviated evidentiary process. Second, the process would contain a comparison-based analysis in which the Board develops an initial comparison group and then allows parties to propose modifications. By having the Board set the initial comparison group, based on pre-determined criteria, the evidentiary process could be simplified, as parties would only have to present evidence on modifications rather than creating their own comparison groups (as is currently the case in Three-Benchmark cases). Third, the process would contain other procedural modifications that help expedite and streamline the comparison-based assessment. In particular, the Board is considering ideas such as limiting discovery, establishing mandatory disclosures, limiting the length of filings, and establishing an evidentiary hearing in lieu of rebuttal evidence. Finally, because the process would only be intended for small disputes, the Board would limit the amount of relief available.

It is the Board's goal that procedures evolving from this ANPR would shorten the case timeline and reduce litigation costs, while achieving the same objectives as the existing rate methodologies and minimizing the loss of precision. The Board is guided by the concerns raised during the public comment period in Docket No. EP 665 (Sub–No. 1), namely that the Board's current rate review processes are cost-prohibitive for grain and other shippers with small disputes, and by the rail transportation policy set forth at 49 U.S.C. 10101. The Board must balance the shippers' interest in being protected from unreasonable rates, *see* 49 U.S.C. 10101(6), against the need to promote a safe and efficient rail transportation system by allowing rail carriers to earn adequate revenues, *see* 49 U.S.C. 10101(3), 49 U.S.C. 10701(d)(2). We must also consider all parties' needs for expeditious handling of proceedings, *see* 49 U.S.C. 10101(15).

We are seeking comment in a new docket, Docket No. EP 665 (Sub–No. 2), as we believe this methodology should be available to shippers of all commodities, not just grain, with small disputes. Many of the concerns raised about the accessibility of the Board's existing rate reasonableness procedures are general in nature. Indeed, some commenters expressly acknowledged that such concerns may be equally applicable to shippers of other commodities (*see, e.g.,* ARC Opening 9–10 ("Many of the deficiencies in the status quo may not be unique to grain")), while others argued that limiting the availability of a methodology to a subset of shippers or commodities would be arbitrary (*see, e.g.,* NSR Opening 6 ("nothing in the Board's governing statutes or prior considerations of rate regulation . . . suggests that the economic basis or soundness of a [rate] methodology . . . should vary based on the shipper or commodities at issue")). Thus, we are exploring how best to develop a new methodology available to shippers of all commodities.

The Board seeks comment on whether the procedures set forth in this decision—or variations on these procedures—would provide a reasonable yet accessible methodology for use in very small rate disputes. The Board also welcomes comments on other means the Board could implement to keep the costs of a new process low.

New Methodology in Docket No. EP 665 (Sub–No. 2)

I. Availability of New Methodology

Although the concerns expressed by the agricultural community in Docket No. EP 665 (Sub–No. 1) and elsewhere have been instrumental in informing the Board of the need for a new approach, we do not believe that a new methodology should be limited to small shippers of only agricultural products. Instead, as discussed above, we are exploring how best to develop a new methodology that would be available to shippers of all commodities with small disputes.

We are considering limiting this methodology, however, to disputes involving only Class I rail carriers. The Board does not envision that the new process would apply to purely local movements of a Class II or Class III carrier, which would be consistent with the Three-Benchmark methodology. *See Simplified Standards,* EP 646 (Sub–No. 1), slip op. at 102 (explaining limitations of methodology with respect to Class II and III carriers). However, we seek comment on whether this methodology, if adopted, should or should not be applicable to Class II and III rail carriers.

II. Comparison Group Approach

The new methodology the Board is considering would utilize a comparison group approach to determine the reasonableness of the challenged traffic's rate. Under such an approach, the issue traffic would be compared against a comparison group of similar traffic drawn from the preceding four years of data in the Board's Waybill Sample. In order to reduce litigation costs, the Board would determine an initial comparison group based on default parameters established in a rulemaking, rather than having parties develop and tender a proposed comparison group, as is done in Three-Benchmark cases. *See Simplified Standards,* EP 646 (Sub–No. 1), slip op. at 18. As discussed in more detail below, both the complainant and the defendant would have the opportunity to present arguments regarding the appropriateness of the initial comparison group determined by the Board and propose modifications to the group. After considering the arguments proposed by the parties, the Board would determine which movements would comprise the final, adjusted comparison group, which the Board would use in its rate reasonableness analysis.

The Board is considering the following default parameters for selecting the initial comparison group and seeks comment on each.

Traffic at or Above 180% R/VC. The Board is considering including other potentially captive traffic, *i.e.,* traffic priced at or above the 180% R/VC level, in the comparison group, but not traffic priced below the 180% R/VC level. Excluding traffic with an R/VC level below 180% would be consistent with the Board's explanation that only captive traffic over which the carrier has market power should be included in the comparison group in the Three-Benchmark methodology. *See Simplified Standards,* EP 646 (Sub–No. 1), slip op. at 17 ("[t]he purpose of the R/VC_{COMP} benchmark is to use the R/VC ratios of other 'potentially captive traffic' (*i.e.,* traffic priced above the 180% R/VC level) as evidence of the reasonable R/VC levels for traffic of that sort. . . . The rates available to traffic with competitive alternatives would provide little evidence on the degree of permissible demand-based differential pricing needed to provide a reasonable return on the investment."). Although the shipper community presented arguments in favor of including traffic below 180% R/VC in comparison groups, the Board is concerned that including shipments below 180% R/VC may be contrary to the principle of demand-based differential pricing. The Board invites comment on the advisability of including or excluding non-captive traffic in comparison groups.

Traffic With Similar Shipping Characteristics. The comparison group would also include traffic that shares similar shipping characteristics as the issue traffic, as rail rates typically depend, at least in part, on the length of haul, shipment type, and the type of commodity being shipped. The Board, therefore, is considering limiting comparable movements to those movements that satisfy all of the following criteria:

(a) The movement is within a +/− 15% mileage band around the actual miles travelled by the challenged traffic,

(b) the movement is of the same shipment type (*e.g.,* unit train traffic or non-unit train traffic), and

(c) the movement is of a commodity classified under the same Standard Transportation Commodity Code (STCC).

With respect to the last of these parameters, the Board believes that the most appropriate method of determining which commodities should be used in the comparison group is to use the same five-digit STCC as the issue traffic. Commodities listed at the five-digit STCC generally should be similar enough in characteristics for inclusion in the comparison group. However, certain other commodities differ at an even more granular level, such as chemicals (*i.e.,* any commodity with a STCC starting with 28), and therefore may best be limited to comparisons to the seven-digit STCC. Chemicals are highly varied at the five-digit STCC designation and therefore may require a finer degree of distinction when selecting the initial comparison group.

The Board invites comment on these comparison group procedures, and also on which commodities would be appropriately compared at the seven-digit STCC. The Board also invites comment on whether the Board should consider expanding the comparison of commodities beyond the five- or seven-digit STCC level in the event that this parameter would result in the initial comparison group containing insufficient observations. In order for any study to be statistically valid, the study sample must contain a minimum number of observations, and that minimum number varies depending on the type and complexity of the analysis to be undertaken. For the purposes of comparison-based rate reasonableness analyses, the Board is concerned that fewer than 20 observations would be insufficient. *See e.g., E.I. du Pont de Nemours & Co.* v. *CSX Transp., Inc.,* NOR 42101, slip op. at 13 (STB served June 30, 2008) (deciding a Three-Benchmark rate case where the comparison group included 23 observations and the sample size was uncontested). Therefore, the Board seeks comments on whether the Board should, in instances where there are insufficient observations, relax the default STCC limitation to the next most specific STCC level that yields sufficient observations for the comparison group. For example, if a comparison group based on a seven-digit STCC code contains too few observations, we could examine the corresponding five-digit STCC, then the four-digit STCC, and so on, until the comparison group includes greater than 20 observations.

The Board invites comments on this possible approach of broadening the STCC limitation in this manner and on whether a 20-observation minimum would be an appropriate requirement.

Contract and Tariff Traffic. The comparison group would include contract and tariff traffic from the defendant carrier, excluding the issue traffic. As the Board noted in *Simplified Standards,* EP 646 (Sub–No. 1), slip op. at 83, excluding contract movements from the comparison group may leave insufficient movements from the Waybill Sample to perform a statistically meaningful comparison analysis. The Board is considering applying a common carrier adjustment to the comparison group to account for the contract traffic similar to the one applied in *U.S. Magnesium, L.L.C.* v. *Union Pacific Railroad,* NOR 42114, slip op. at 18–19 (STB served Jan. 28, 2010), *aff'd sub nom. Union Pacific Railroad* v. *STB,* 628 F.3d 597 (D.C. Cir. 2010). The Board invites comment on the inclusion of contract traffic and a common carrier adjustment. Additionally, the Board invites parties to propose alternative means of calculating a common carrier adjustment.

Non-Defendant Carrier Traffic. The Board seeks comment on whether to expand the comparison group in this new methodology to include traffic from non-defendant carriers[11] operating in the same URCS region[12] as the defendant carrier. The Board has, in the past, acknowledged that varying joint and common costs can lead to inevitable differences in R/VC ratios among different carriers. *See Simplified Standards,* EP 646 (Sub–No. 1), slip op. at 82–83. We are mindful of the concerns raised by the railroads, and previously acknowledged by the Board, about comparing R/VC ratios across carriers. However, shippers have also raised arguments as to why the Board should include non-defendant traffic. (*See, e.g.,* NGFA Opening 28–29; ARC Opening 23.) Notwithstanding the Board's previously stated concerns and the concerns raised by the railroads, the Board seeks comment on whether it should reconsider this issue. Additionally, the Board is considering whether, for the purposes of a new methodology, it may be appropriate to include non-defendant traffic in the comparison group to ensure that the Board can perform a statistically meaningful comparison analysis. Including non-defendant movements could help ensure that the initial comparison group includes sufficient movements from the Waybill Sample on which the Board can base its rate reasonableness determination.[13]

The Board notes, however, that, including non-defendant traffic in the comparison group likely would necessitate third-party discovery (as to whether cost structure differences between carriers make certain movements inappropriate for the comparison group) and would affect whether parties would be required to hire outside counsel to manage the receipt of confidential Waybill Sample data from other carriers. *See* 49 CFR 1244.9. We recognize that these issues would add a layer of complexity to the process, potentially increasing the time and expense required to bring a case.[14] We seek comment on the advisability of including non-defendant traffic in all or limited circumstances under this simplified methodology, and how such inclusion would affect the time and costs to bring a case.

III. Procedural Considerations

The Board recognizes that it is essential that any procedures comprising a new rate reasonableness methodology be both more streamlined and less costly than the Board's existing rate review processes. As a result, the Board is considering the procedures set forth below with the goal of achieving a shortened procedural schedule and including measures addressing concerns that the existing procedures for challenging a rate are cost-prohibitive.

1. Preliminary Screen

Given the abbreviated evidentiary presentation in a simplified, lower-cost process, the Board is considering requiring that challenged traffic meet certain threshold criteria in order to be eligible to be reviewed under the new methodology. This preliminary screen would seek to identify those movements for which truck transportation alternatives are unlikely and the rates are significant outliers, allowing the Board to make market dominance and rate reasonableness determinations based on the abbreviated evidentiary submissions described below. The issue traffic would, of course, have to be priced above the 180% R/VC level, which is the statutory floor for regulatory rail rate intervention. *See* 49 U.S.C. 10707(d).

Additionally, the Board is considering the following criteria for the issue traffic as a preliminary screen and seeks comment on each of the following potential criteria.

Issue Traffic Length of Haul. The origin and destination of the issue traffic would be required to be located a certain minimum distance apart. As noted in *Review of Commodity, Boxcar, and TOFC/COFC Exemptions,* EP 704 (Sub–No. 1), slip op. at 7 n.12 (STB served Mar. 23, 2016) (with Commissioner Begeman dissenting), trucking becomes less viable when the length of haul exceeds 500 miles because in many instances a transport over that threshold cannot be completed in one day. Thus, it may be appropriate to require that the origin and destination be more than 500 highway miles apart. Traffic moving fewer than 500 highway miles between origin and destination would not be eligible to be challenged under the new methodology because trucking alternatives for those movements are more likely. Such a criterion could allow the Board to consider making market dominance determinations on an abbreviated evidentiary presentation.

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[11] Because the Board is considering a new rate review process for use against Class I carriers, the comparison group would likewise include only rates charged by other non-defendant Class I carriers.

[12] In calculating regional data, URCS defines each of the reporting Class I carriers as being either in the Eastern Region or Western Region. The Eastern Region includes CN, CSXT, and NSR. The Western Region includes BNSF, CP, KCS, and UP.

[13] The Board intends to propose modifications to the Waybill sampling rate in a subsequent decision, which would also help ensure sufficient observations.

[14] The necessity for third-party discovery, and what that might entail, is discussed in more detail in section III(2), Limits on Discovery, below.

Issue Traffic Revenue Per Ton Mile. As noted, part of the preliminary screen would be to determine if rates are significant outliers. The Board is considering using revenue per ton mile to make this determination. Specifically, the Board could require the revenue per ton mile of the challenged traffic to be in the top 10% or 20% of the initial, Board-determined comparison group. Another possibility would be to require the issue traffic to be at least one standard deviation above the mean revenue per ton mile of the comparison group.[15] Analyzing how a movement's revenue per ton mile compares to the revenue per ton mile earned on similar movements would help identify movements with outlier rates. The Board would complete this revenue per ton mile analysis following the receipt of the defendant's answer, in which the defendant would provide the actual miles traveled by the challenged traffic. The Board invites parties to comment on these or other measures that would achieve the same objective of identifying movements in which rates are significant outliers.

Prior Litigation. Lastly, the Board is considering a requirement that the complainant must not have brought a case against the defendant under this methodology within a certain number of years. This limitation could correspond to the maximum rate prescription available under the new process, which is discussed in more detail in the section related to limits on relief below. By including this limitation, the Board intends to prevent attempts to divide a large dispute into multiple smaller disputes.

2. Limits on Discovery

The Board also is considering limiting discovery in order to reduce litigation costs for very small disputes. In particular, the Board could require that parties file certain initial disclosures with their complaint and answer. Concurrent with the filing of its complaint, the complainant could be required to disclose the nine standard inputs for the URCS Phase III costing program.[16] The complainant could also be required to provide a preliminary estimate of the variable cost of the challenged movements, using the unadjusted figures produced by the URCS Phase III costing program on the Board's Web site,[17] to demonstrate that the Board's jurisdictional threshold has been met. The complainant could also be required to provide to the Board and the defendant all documents that it relied upon to determine the inputs to the URCS Phase III costing program. The Board invites parties to comment on whether the URCS Phase III costing program should be used as described, or whether the availability of this new process would be improved by some alternative, such as by creating a paper form for submitting URCS Phase III inputs to the Board.

With regard to qualitative market dominance, the complainant could also be required to make certain required disclosures. For example, in a verified statement by a company official, the complainant could be required to submit: (i) A statement that the issue traffic has not moved more than a de minimis amount on alternative transportation modes between the same origin and destination within a certain number of years, and (ii) a statement whether the complainant has made any inquiries to, or received any responses from, alternative transportation providers for the issue traffic within a certain number of years, including copies of any such communications (if available).

The defendant could likewise be required to provide initial disclosures to the complainant concurrent with filing its answer. Like the complainant, the defendant could be required to produce its preliminary estimate of the variable cost of the challenged movement, using the unadjusted figures produced by the URCS Phase III costing program. To the extent that the defendant disagreed with any of the URCS inputs provided in the complaint, it could also be required to provide the inputs that it used. The defendant could also be required to provide to the Board and the complainant all documents that it relied upon to determine the inputs used in the URCS Phase III costing program. Finally, the defendant could be required to disclose the actual route miles for the issue traffic and provide supporting data to the Board and, upon request, to the complainant.

Another limit on discovery could be to limit the amount or type of party-initiated discovery or eliminating such discovery altogether, given that the need for such information would be significantly reduced by the simplifications discussed here. For example, the fact that the initial comparison group would be set by the Board (based on defined criteria) and not the parties would eliminate one need for the parties to seek discovery. In terms of limiting discovery, in preparing its answer, the defendant could reply with information that is either disclosed by the complainant in its complaint or opening evidence, or developed independently by the defendant, but the defendant would not be permitted to seek additional discovery from the complainant. Likewise, the complainant would not be permitted to serve any discovery on the defendant in preparation of its evidentiary submissions.

Additionally, as noted above, if the Board were to include non-defendant traffic in the comparison group, the Board is concerned that it would be required to permit discovery from the non-defendant carriers whose traffic is included in the comparison group. In that case, the Board could consider limits, such as five interrogatories (including subparts) and five document requests (including subparts) per party for each non-defendant carrier, and could require that such discovery be completed by a specific number of days. Such third-party discovery would occur prior to the submission of each party's evidence.

We therefore seek comment on whether to mandate certain initial disclosures and, if so, what those disclosures should be, and any other ways to limit or eliminate party-initiated discovery in a new, streamlined comparison group methodology for small disputes.

3. Submission of Evidence

The Board seeks comment on the following procedures it is considering for use in a new simplified rate reasonableness methodology.

Complaint. A party would initiate a case by filing a complaint with the Board. In its complaint, the complainant would be required to: (i) Allege that the rates for certain traffic are unreasonable, (ii) allege that the defendant has both quantitative market dominance (*i.e.*, the issue traffic must move at rates above 180% R/VC) and qualitative market dominance (*i.e.*, other modes of transportation are not feasible); and (iii) submit the required initial disclosures, as described above in the section on limits on discovery. The complaint and initial disclosures would include information sufficient for the Board to determine that the issue traffic meets a preliminary screen, discussed in more detail above. Additionally, with its complaint, the complainant would submit a signed confidentiality agreement. The agreement would be standardized specifically for cases brought under the new process and available for download on the Board's Web site. By asking parties to submit the confidentiality agreement early in the process, the Board could expedite the distribution of the comparison group. The Board invites comment on the appropriate content or other issues related to the filing of the complaint.

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[15] A standard deviation is defined as a measure of spread, dispersion, or variability of a group of numbers equal to the square root of the variance of that group of numbers. The variance of the group of numbers is computed by subtracting the mean, or average, of all the numbers, squaring the resulting difference, and computing the mean of these squared differences.

[16] The nine inputs include: (1) The carrier; (2) the type of shipment (local, received-terminated, etc.); (3) the one-way distance of the shipment; (4) the type of car; (5) the number of cars; (6) the car ownership (private or railroad); (7) commodity type (by STCC); (8) the weight of the shipment (in tons per car); and (9) the type of movement (single-car, multi-car, or unit train). In the event that a complainant does not have access to the actual miles of the length of haul, a showing of highway miles between the origin and destination pair would be sufficient for the purposes of the complainant's initial disclosures.

[17] The current version of the URCS Phase III costing program is available at *http://www.stb.dot.gov/stb/industry/urcs.html.*

Answer. In its answer, the defendant would be required to admit or deny each of the allegations in the complaint and submit its initial disclosures, described above. The defendant would also file with its answer a signed copy of the standardized confidentiality agreement. The Board invites comment on the appropriate content or other issues related to the filing of the answer.

Opening Evidence. Unlike in Three-Benchmark cases, the Board envisions sequential rather than simultaneous filings of each party's evidence. In its opening evidence, the complainant would address both qualitative market dominance[18] and the appropriateness of the initial comparison group. With respect to qualitative market dominance, given the information derived from the preliminary screen and the initial disclosure requirements, the complainant would be permitted to present an abbreviated evidentiary submission, but must explain why the use of other transportation modes is not feasible. The complainant could also expand on its initial disclosures to the extent necessary.

In its opening evidence, the complainant would also have the opportunity to state whether the initial, Board-determined comparison group is appropriate. The complainant may propose adjustments to the default initial comparison group and present "other relevant factors" evidence, such as a density adjustment or PTC adjustment, among others.

Reply Evidence. The defendant's reply would likewise address both qualitative market dominance and the appropriateness of the default initial comparison group. Specifically, in its reply evidence, the defendant would have the opportunity to reply to the complainant's qualitative market dominance evidence. As noted above, we are considering limits on discovery as it relates to qualitative market dominance. For example, in formulating its response to the complainant's qualitative market dominance evidence, the defendant could be limited to information disclosed by the complainant with its complaint or opening evidence or developed independently by the defendant.

The defendant would also have the opportunity to respond to the complainant's arguments regarding the appropriateness of any proposed adjustments to the default initial comparison group. The defendant could also propose its own adjustments to the default initial comparison group and set forth "other relevant factors" evidence.

Limitations on Opening and Reply Evidence. In order to minimize the time and expense associated with litigating a small rate dispute, the Board is considering placing limitations on the opening and reply evidence, such as imposing word or page limits on the complainant's opening evidence and the defendant's reply evidence. The Board seeks comment on whether to include a word or page limitation and if so, what the appropriate limitation would be.

We recognize that, even with a word limit and limits on or exclusion of discovery, allowing parties' presentations to include "other relevant factors" evidence could substantially increase the cost and time required to prepare for submission of a case. For instance, we do not expect that the examples noted above—a density adjustment or PTC adjustment—could be easily calculated by a small entity without hiring outside consultants. Therefore, the Board invites comment on the advisability of allowing parties' presentations to include "other relevant factors" evidence. The Board also invites parties to comment on the appropriateness of sequential as opposed to simultaneous filings of each party's evidence, a reasonable time-frame for considering qualitative market dominance arguments, a reasonable word or page limit for opening and reply evidence, and any other issues related to the filing of opening and reply evidence.

Evidentiary Hearing. In an effort to make the new process cost-effective for small disputes, the Board is considering offering an evidentiary hearing following the submission of opening and reply evidence, in lieu of formal rebuttal filings and final briefs. The evidentiary hearing, which would take place before Board staff, would permit the Board to further examine and develop the evidentiary record without requiring the parties to take on the higher litigation costs associated with formal written submissions. At the evidentiary hearing, the complainant would have the opportunity to rebut the defendant's reply and respond to Board staff's questions. The defendant would also participate in the hearing and could respond to any questions from Board staff. Board staff would have the opportunity to further explore the parties' arguments regarding the appropriateness of the comparison group. A court reporter would be present, and the transcript would become part of the record. The evidentiary hearing could also take place by conference call. We invite parties to comment on whether an evidentiary hearing in lieu of rebuttal filings and final briefs would help minimize the time or expense associated with litigating a case under a new rate methodology for small disputes.

4. Board Determinations

Under the procedures being considered as described in this decision, the Board would issue two decisions. First, following receipt of the defendant's answer, the Board would issue a preliminary decision in which the Board would (i) resolve any URCS Phase III input disputes, (ii) determine whether the challenged traffic meets the preliminary screen based on the initial comparison group, and (iii) make a final determination on whether the defendant carrier has quantitative market dominance over the movements at issue. In the event that the issue traffic fails to meet the preliminary screen based on the initial comparison group, the Board would dismiss the complaint without prejudice. For challenged traffic that satisfies the preliminary screen, the Board would provide the initial comparison group data pursuant to the standardized confidentiality agreements previously filed by the parties.

Second, following the evidentiary hearing, the Board would issue a final decision addressing qualitative market dominance and rate reasonableness. With regard to qualitative market dominance, the Board expects that its qualitative market dominance analysis could be far more limited than in other rate reasonableness methodologies given the preliminary screen and initial disclosure requirements. In particular, because the screen would help identify movements that are more likely to be captive, the Board envisions determining qualitative market dominance without as extensive an analysis as under the current methodologies. The Board seeks comments on specific qualitative market dominance factors it could consider for this type of new rate reasonableness methodology.

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[18] Under the procedures envisioned, quantitative market dominance would be decided by the Board prior to the filing of opening evidence based on the information provided in the complaint and answer.

If the Board finds that the defendant carrier has qualitative market dominance over the challenged traffic, the Board would address each of the parties' arguments regarding the appropriateness of the initial comparison group and adjustments thereto. If the comparison group is adjusted, the Board would reevaluate the challenged traffic to ensure that it continues to satisfy the preliminary screen based on the adjusted comparison group. In the event that the issue traffic fails to meet the preliminary screen based on the adjusted comparison group, the Board would dismiss the proceeding with prejudice to the complainant challenging the same movement under the new method for a certain period, but without prejudice to the complainant challenging the same movement under one of the Board's other rate review processes.

For the rate reasonableness determination, the Board would compute the maximum R/VC ratio for the issue traffic in a manner similar to the Three-Benchmark analysis, although with a potential modification. Specifically, the Board would apply a revenue need adjustment—which is the ratio of RSAM ÷ $R/VC_{>180}$ (each of which is a four-year average calculation)[19]—to each movement in the final comparison group. The Board would then calculate the mean and standard deviation of the R/VC ratios for the adjusted comparison group (weighted in accordance with the proper sampling factors). If the challenged rate is above a reasonable confidence interval around the estimate of the mean for the adjusted comparison group, it would be determined unreasonable and the maximum lawful rate would be prescribed at that upper boundary level.[20]

However, the Board is considering departing from Three-Benchmark precedent with respect to the revenue need adjustment. As noted, in a Three-Benchmark case, each movement in the final comparison group is adjusted by a revenue need adjustment factor. During the public comment period in Docket No. EP 665 (Sub–No. 1), NGFA proposed the creation of an alternative revenue need adjustment factor—a Revenue Adequacy Adjustment Factor (RAAF), which would be commodity-specific and would account for the revenue adequacy status of each railroad. NGFA argues that the RAAF is superior to the Board's current revenue need adjustment factor because it takes into consideration the amount of issue commodity traffic that is ostensibly captive to the railroad and allocates the burden of a revenue need adjustment factor to those commodities that provide the most revenue. (NGFA Opening, V.S. Crowley 12.) There may be merit to NGFA's suggestion that our current revenue need adjustment factor could be adapted to reflect the differences in rates and revenues carriers obtain from various commodity groups. Thus, the Board is considering whether it could make the revenue need adjustment factor commodity specific. However, if the Board were to adopt a commodity specific revenue need adjustment factor, we must ensure that we establish the most appropriate formula.

Therefore, we seek comment on whether the Board should modify its revenue need adjustment factor to be commodity-specific, and if so, how we can effectively disaggregate the existing RSAM on a commodity-by-commodity basis. Because some commodities have a higher R/VC ratio than others, the adjusted revenue need adjustment factor should allocate the revenue shortfall in ways that reflect the different demand elasticities faced by different commodities. However, the weighted average of all commodities when totaled should equal the overall RSAM.

We believe that, on average, differences in demand elasticities are reflected in R/VC ratios—those with higher R/VC ratios tend to enjoy less direct and indirect competition while those with lower R/VC ratios tend to enjoy somewhat more competition. In an individual proceeding, we would consider applying a commodity-specific RSAM where the resulting figure reflects this intuition. We believe such a mark-up could be done in a manner consistent with Ramsey pricing principles.[21] If the Board were to adopt such a modified revenue need adjustment factor, we also seek comment on whether the reliance on a single year's data would be inappropriate. Because profits are pro-cyclical, we believe an approach that considers a longer period of time may be more appropriate. Finally, we also seek comment on whether application of a modified revenue need adjustment factor, if adopted, should be limited to a new methodology.

5. Limits on Relief

Because of the abbreviated nature of the process described in this decision, the Board is considering limiting relief available under this process. The ideas presented in the ANPR describe a process that would be significantly more streamlined than the process required to bring a Three-Benchmark case. As such, the relief available under this method would likewise need to be significantly less than the relief available under the Three-Benchmark approach. The Board invites parties to comment on the amount of relief that should be available and why that amount of relief would be appropriate.

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[19] The jurisdictional threshold for rail rate regulation, $R/VC_{>180}$, also serves as the floor for regulatory relief because the Board cannot prescribe a rate below the jurisdictional threshold. *See* 49 U.S.C. 10707(d); *W. Tex. Utils. Co.* v. *Burlington N. R.R.*, 1 S.T.B. 638, 677–78 (1996), *aff'd sub nom.*, *Burlington N. R.R.* v. *STB*, 114 F.3d 206, 210 (D.C. Cir. 1997).

[20] The confidence interval would be a function of the number of movements in the comparison group and the standard deviation of those (potentially adjusted) R/VC ratios. A small standard deviation or large number of observations would produce a tighter confidence interval, so that we could have more "confidence" in the accuracy of our estimate of the mean of the comparison group. Using the mean (R/VC_{COMP}) and standard deviation (S) of the adjusted comparison group, along with the number of movements in the comparison group (n), the upper boundary of a reasonable confidence interval around the estimate of the mean would be derived as follows: Upper Boundary = $R/VC_{COMP} + t_{n-1} \times (S \div (n-1)^{1/2})$. The Student's t-distribution parameter, t_{n-1}, will range from 3.078 to 1.28 depending on the number of movements in the comparison group. The precise number can be found in statistical tables for the Student's t-distributions.

[21] Ramsey pricing refers to the pricing principals first advocated by the British mathematician and economist Frank P. Ramsey, whose economic pricing model was published in *A Contribution to the Theory of Taxation*, 37 Econ. J. 47–61 (Mar. 1927). "Ramsey pricing" is a widely recognized method of differential pricing—that is, pricing in accordance with demand. Under Ramsey pricing, each price or rate contains a mark-up above the long-run marginal cost of the product or service to cover a portion of the unattributable costs. The unattributable costs are allocated among the purchasers or users in inverse relation to their demand elasticity. Thus, in a market where shippers are very sensitive to price changes (a highly elastic market), the mark-up would be smaller than in a market where shippers are less price sensitive. The sum of the mark-ups equals the unattributable costs of an efficient producer. *See Guidelines*, 1 I.C.C.2d at 526–527.

While Ramsey pricing represents the most efficient way to price above marginal cost, reliance on pure Ramsey pricing clashes with the Long-Cannon factors because it would not maximize the revenue contribution from traffic with more-elastic demand (competitive traffic) before calling on traffic with less-elastic demand (captive traffic) to make a differentially higher revenue contribution. For these reasons, the Board has not adopted pure Ramsey pricing theory. Rather, in SAC cases, the Board allocates stand-alone costs *in accordance with* Ramsey pricing principles, by which the SARR (and therefore the carrier) is permitted to engage in demand-based differential pricing to recover the total SAC costs. *Major Issues*, EP 657 (Sub–No. 1), slip op. at 12–13.

The limit on relief would apply to the difference between the challenged rate and the maximum lawful rate, whether in the form of reparations, a rate prescription, or a combination of the two. Any rate prescription would automatically terminate once the complainant has exhausted the relief available. Thus, the actual length of the prescription may be less than the prescription period if the shipper ships a large enough volume of traffic so that the relief is used up in a shorter time. The complainant would be barred from bringing another complaint against the same rate for the remainder of the prescription period.

Where the shipper exhausts all of its relief before the end of the prescription period, the carrier's rate making freedom would be restored with a regulatory safe harbor at the challenged rate for the remainder of the prescription period, with appropriate adjustments for inflation using the rail cost adjustment factor, adjusted for inflation and productivity (RCAF–A). *See R.R. Cost Recovery Procedures—Productivity Adjustment,* 5 I.C.C.2d 434 (1989), *aff'd sub nom. Edison Elec. Inst.* v. *ICC,* 969 F.2d 1221 (D.C. Cir. 1992). If, however, a carrier establishes a new common carrier rate once the rate prescription expires, and the new rate exceeds the inflation-adjusted challenged rate, the shipper may bring a new complaint against the newly established common carrier rate.

The Regulatory Flexibility Act

Because this ANPR does not impose or propose any requirements, and instead seeks comments and suggestions for the Board to consider in possibly developing a subsequent proposed rule, the requirements of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612 (RFA) do not apply to this action. Nevertheless, as part of any comments submitted in response to this ANPR, parties may include comments or information that could help the Board assess the potential impact of a subsequent regulatory action on small entities pursuant to the RFA.

Conclusion

The Board seeks public input on how best to establish a new rate reasonableness process for use in small disputes, available to shippers of all commodities, to provide shippers with small disputes meaningful access to regulatory relief in those cases where even a Three-Benchmark case is too costly, given the value of the case. The Board welcomes comments from interested parties on the issues and considerations presented in this decision.

It is ordered:

1. Comments are due by November 14, 2016. Reply comments are due by December 19, 2016.

2. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.

3. Notice of this decision will be published in the **Federal Register**.

4. This decision is effective on its service date.

Decided: August 30, 2016.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman. Vice Chairman Miller commented with a separate expression.

Kenyatta Clay,

Clearance Clerk.

VICE CHAIRMAN MILLER, commenting:

Today's decision is an important step forward for the Board. Despite the agency's well-intentioned efforts over the years to create simpler, timelier, and less costly rate dispute processes, I believe that they are still inaccessible to shippers with small disputes, denying them the opportunity to obtain rate relief. This decision focuses on filling that gap in our processes.

While I applaud the Board for today's action, we still have work to do. Even if the Board is able to develop an abbreviated rate case methodology that can be used by shippers with small rate disputes, it will not resolve the concerns that have been raised about the SAC test. The methodology here is only intended to address small rate disputes for shippers that meet certain criteria. As such, the Board still needs to consider alternatives to the SAC test for shippers with larger disputes. A reasonable starting point to address this issue would be for the Board to publicly release the report prepared by our outside consultant on SAC alternatives and conduct a hearing to obtain feedback and reaction from our stakeholders on the report's conclusions.[22] Hopefully the report will be issued soon and stakeholders given an opportunity to comment.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix A—Participants in Docket No. EP 665 (Sub–No. 1)

The Board received written comment and testimony from the following parties in Docket No. EP 665 (Sub–No. 1).

Opening comments were received from:

- Alliance for Rail Competition (ARC) (joined by Montana Wheat and Barley Committee, National Farmers Union, Colorado Wheat Administrative Committee, Idaho Barley Commission, Idaho Grain Producers Association, Idaho Wheat Commission, Montana Farmers Union, North Dakota Corn Growers Association, North Dakota Farmers Union, South Dakota Corn Growers Association, South Dakota Farmers Union, Minnesota Corn Growers Association, Minnesota Farmers Union, Wisconsin Farmers Union, Nebraska Wheat Board, Oklahoma Wheat Commission, Oregon Wheat Commission, South Dakota Wheat Commission, Texas Wheat Producers Board, Washington Grain Commission, Wyoming Wheat Marketing Commission, USA Dry Pea and Lentil Council, and National Corn Growers Association)
- Association of American Railroads (AAR)
- BNSF Railway Company (BNSF)
- CSX Transportation, Inc. (CSXT)
- National Grain and Feed Association (NGFA)
- Norfolk Southern Railway Company (NSR)
- Union Pacific Railroad Company (UP)
- U.S. Department of Agriculture (USDA)

Reply comments were received from:

- AAR
- Agribusiness Association of Iowa, Agribusiness Council of Indiana, Agricultural Retailers Association, American Bakers Association, American Farm Bureau Federation, American Feed Industry Association, American Soybean Association, California Grain and Feed Association, Corn Refiners Association, Institute of Shortening and Edible Oils, Kansas Cooperative Council, Kansas Grain and Feed Association, Grain and Feed Association of Illinois, Michigan Agribusiness Association, Michigan Bean Shippers Association, Minnesota Grain And Feed Association, Missouri Agribusiness Association, Montana Grain Elevators Association, National Council of Farmer Cooperatives, National Farmers Union, National Oilseed Processors Association, Nebraska Grain and Feed Association, North American Millers' Association, North Dakota Grain Dealers Association, Northeast Agribusiness and Feed Alliance, Ohio Agribusiness Association, Oklahoma Grain and Feed Association, Pacific Northwest Grain and Feed Association, Pet Food Institute, South Dakota Grain and Feed Association, Texas Grain and Feed Association, USA Rice Federation, and Wisconsin Agribusiness Association (collectively, AAI)
- ARC (joined by the same parties that joined its opening comment as well as the Nebraska Corn Growers Association)
- BNSF
- CSXT
- Kansas City Southern Railway Company (KCS)
- NGFA
- NSR
- Jay L. Schollmeyer for and on behalf of SMART–TD General Committee of Adjustment (SMART–TD)

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[22] *Sunbelt Chlor Alkali P'ship* v. *Norfolk S. Ry.*, NOR 42130, slip op. 44 (STB served June 30, 2016) (Miller concurrence).

- Texas Trading and Transportation Services, LLC, dba TTMS Group, together with Montana Grain Growers Association (TTMS Group)
- UP
- USDA

Testimony at the June 10, 2015 hearing was received from:

- AAR
- ARC
- BNSF
- Canadian National Railway Company (CN)
- Canadian Pacific Railway Company (CP)
- CSXT
- Michigan Agri-Business Association[23]
- Montana Department of Agriculture
- NGFA
- NSR
- SMART–TD
- Transportation Research Board of the National Academy of Sciences
- TTMS Group
- UP
- USDA

Supplemental comments were received from:

- AAR
- ARC (joined by the same parties that joined its opening comment)
- NSR

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2016–0042; FXES11130900000–167–FF09E42000]

RIN 1018–BA41

Endangered and Threatened Wildlife and Plants; Removing the Greater Yellowstone Ecosystem Population of Grizzly Bears From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period; availability of peer review and supplementary documents.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on our March 11, 2016, proposed rule to revise the List of Endangered and Threatened Wildlife, under the authority of the Endangered Species Act, by removing the Greater Yellowstone Ecosystem population of grizzly bears (*Ursus arctos horribilis*). In our proposed rule, we emphasized that the governments of Montana, Wyoming, and Idaho needed to promulgate regulations managing human-caused mortality of grizzly bears before we would proceed with a final rule. Montana, Wyoming, and Idaho recently finalized such mechanisms. We are also announcing the receipt of five independent peer reviews of the proposed rule. We are reopening the comment period for the proposed rule to allow all interested parties an additional opportunity to comment on the proposed rule in light of these documents. If you submitted comments previously, you do not need to resubmit them because we have already incorporated them into the public record and will fully consider them in preparing the final rule.

DATES: We will consider comments received or postmarked on or before October 7, 2016. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov*. In the search box, enter the docket number for the proposed rule, which is FWS–R6–ES–2016–0042. Then click on the Search button. On the resulting page, you may submit a comment by clicking on "Comment Now!" Please ensure you have found the correct document before submitting your comments. If your comments will fit in the provided comment box, please use that feature of *http://www.regulations.gov,* as it is most compatible with our comment review procedures. If you attach your comments as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters or a petition), our preferred format is a spreadsheet in Microsoft Excel.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R6–ES–2016–0042; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service; MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see Public Comments below in **SUPPLEMENTARY INFORMATION** for more information).

Document availability: You may obtain the information and documents associated with this reopened public comment period and described below in **SUPPLEMENTARY INFORMATION** at *http://www.regulations.gov* under Docket No. FWS–R6–ES–2016–0042, from the Service's Mountain Prairie Region Grizzly Bear Web site *https://www.fws.gov/mountain-prairie/es/grizzlybear.php,* or from the office listed in **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Wayne Kasworm, Acting Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service, Grizzly Bear Recovery Office, University Hall, Room #309, University of Montana, Missoula, MT 59812; telephone 406–243–4903. For Tribal inquiries, contact Ivy Allen, Native American Liaison, U.S. Fish and Wildlife Service; telephone: 303–236–4575. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on the March 11, 2016, proposed rule (81 FR 13174) to remove the Greater Yellowstone Ecosystem (GYE) population of grizzly bears (*Ursus arctos horribilis*) from the List of Endangered and Threatened Wildlife. We specifically seek comments on the proposed rule in light of five peer reviews and recently finalized State regulatory mechanisms. The State regulations describe Wyoming, Montana, and Idaho's approach to managing human-caused mortality should we delist the grizzly bear in the GYE. The State regulatory mechanisms include Montana's Grizzly Bear Hunting Regulations, Chapter 67 of the Wyoming Game and Fish Commission regulations, Idaho's Fish and Game Commission Proclamation, and the Memorandum of Agreement Regarding the Management and Allocation of Discretionary Mortality of Grizzly Bears in the Greater Yellowstone Ecosystem (Tri-State MOA). Copies of Grizzly Bear Montana Hunting Regulations, Chapter 67 of the Wyoming Game and Fish Commission regulations, Idaho's Fish and Game Commission Proclamation, and the Tri-State MOA are available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R6–ES–2016–0042 or at *https://www.fws.gov/mountain-prairie/es/grizzlybear.php;* or upon request from the U.S. Fish and Wildlife Service, Grizzly Bear Recovery Office (see **FOR FURTHER INFORMATION CONTACT**). We will consider information and recommendations from all interested parties.

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[23] Written testimony only.

You may submit your comments and materials concerning the proposed rule by one of the methods listed in **ADDRESSES**. We will not accept comments sent by email or fax or to an address not listed in **ADDRESSES**. If you submit a comment via *http://www.regulations.gov,* your entire comment—including your personal identifying information—will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, will be available for public inspection on *http://www.regulations.gov* under Docket No. FWS–R6–ES–2016–0042, or by appointment, during normal business hours, at the Grizzly Bear Recovery Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

On March 11, 2016, we published a proposed rule to revise the List of Endangered and Threatened Wildlife in title 50 of the Code of Federal Regulations at 50 CFR 17.11(h), under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), by removing the Greater Yellowstone Ecosystem (GYE) population of grizzly bears (*Ursus arctos horribilis*) (81 FR 13174). In the proposed rule, we explained that State regulations addressing human-caused grizzly bear mortality in Montana, Wyoming, and Idaho must include five elements to maintain a recovered population of grizzly bears in the GYE:

1. Suspension of all discretionary mortality inside the Demographic Monitoring Area (DMA), except if required for human safety, if the model-averaged Chao2 population estimate falls below 600.
2. Suspension of grizzly bear hunting inside the DMA if total mortality limits for any sex/age class (as per tables 1, 2, and 3 in the proposed rule) are met at any time during the year (the mortality limits in these tables are reiterated in table 1 in this document, below).
3. Prohibition of recreational harvest of female grizzly bears with young.
4. In a given year, allowance of discretionary mortality only if nondiscretionary mortality (*e.g.,* mortality from illegal kills, mortality from self-defense, calculated unknown/unreported mortalities, natural mortalities, and mortality from other causes such as vehicle collisions) does not meet or exceed total mortality limits for that year.
5. Provisions to ensure that any mortality that exceeds total mortality limits in any year will be subtracted from that age/sex class total mortality limit for the following year to ensure that long-term mortality levels remain within prescribed limits inside the DMA.

TABLE 1 [1]—TOTAL MORTALITY [2] LIMITS FOR GRIZZLY BEARS INSIDE THE DEMOGRAPHIC MONITORING AREA

[These mortality rates were calculated as those limits necessary to manage toward the long-term average population size that occurred from 2002 to 2014 using the model-averaged Chao2 population estimate method (674, 95% CI = 600–747). If the population estimate is fewer than 674, the total mortality rate for independent females and dependent young must be less than 7.6 percent. If population size is estimated at fewer than 600 in any year, no discretionary mortality will occur unless necessary for human safety.[3]]

	Total grizzly bear population estimate		
	≤674	675–747	>747
Mortality limit % for independent FEMALES (≥2 years) (using model-averaged Chao2 method)	≤7.6%	9%	10%
Mortality limit % for independent MALES (≥2 years) (using model-averaged Chao2 method)	15%	20%	22%
Mortality limit % for DEPENDENT YOUNG (using model-averaged Chao2 method)	≤7.6%	9%	10%

[1] Similar to table 1 in proposed rule (81 FR 13174, March 11. 2016).

[2] *Total mortality:* Documented known and probable grizzly bear mortalities from all causes including but not limited to: Management removals, illegal kills, mistaken-identity kills, self-defense kills, vehicle kills, natural mortalities, undetermined-cause mortalities, grizzly bear hunting, and a statistical estimate of the number of unknown/unreported mortalities.

[3] The phrasing in the table header in the proposed rule erroneously noted that there would be no discretionary mortality at population levels fewer than or equal to 600 bears, as opposed to population levels fewer than 600 bears. We changed the phrasing here to match the phrasing in the rest of the proposed rule, the revised recovery criteria, and the draft conservation strategy.

We noted that regulatory mechanisms containing these provisions must be in place in each State for delisting to occur because the adequacy or inadequacy of those regulatory mechanisms help inform us whether a species, once delisted, will remain recovered. The ESA requires the Service to consider existing regulatory mechanisms when making listing determinations.

Montana, Wyoming, and Idaho recently finalized such regulatory mechanisms governing potential hunting seasons for grizzly bear. These three States also approved the Tri-State MOA, which outlines their coordinated plans for grizzly bear management and allocates discretionary mortality of grizzly bears in the GYE between the three States. The three States approved the Tri-State MOA on the following dates: Wyoming, on May 11, 2016; Montana, on July 13, 2016; and Idaho, on August 8, 2016.

Highlights of Recently Released State Grizzly Bear Management Regulations

Montana, Wyoming, and Idaho each used a different regulatory method, appropriate to their respective legal processes, to enact their State rules governing human-caused grizzly bear mortality. Montana's Fish and Wildlife Commission adopted hunting regulations that outline the structure of a possible future grizzly bear hunting season on July 13, 2016 (Montana Fish and Wildlife Commission, 2016). Montana's Fish and Wildlife Commission also approved the Tri-State MOA (Wyoming Game and Fish Commission, Montana Fish and Wildlife Commission, & Idaho Fish and Game Commission, 2016). Before adopting these regulations and the MOA, Montana released the drafts of these documents for public comment and review. The Montana Fish and Wildlife Commission adopted the hunting regulations and the MOA in the same manner that it adopts other regulations, with public notice and comment. In the Service Assessment below, we assume the MOA and hunting regulations are regulatory in nature.

On July 8, 2016, the Wyoming Game and Fish Commission approved a regulatory framework that "provides for the management of grizzly bears in Wyoming to ensure a recovered population" (Wyoming Game and Fish Commission, 2016). The Wyoming Game and Fish Commission invited the public to participate in the process of developing these regulations with a public comment period. Once the Governor of Wyoming approves and signs these regulations, they will be incorporated into Chapter 67 of the Wyoming Game and Fish Commission's regulations. In the Service Assessment, set forth below, we anticipate that, prior to publication of our final rule, the Governor of Wyoming will sign the version of the regulations that was approved by the Wyoming Game and Fish Commission.

Idaho's Fish and Game Commission issued a proclamation relating to the limit of the take of grizzly bears in the GYE on August 8, 2016 (Idaho Fish and Game Commission, 2016). Idaho Code Section 36–105 authorizes the Idaho Fish and Game Commission to use proclamations, which "have full force and effect as law," as a means of "setting any season or limit on numbers, size, sex or species of wildlife classified by the commission as game animals." Since grizzly bears are classified as game animals in Idaho Administrative Code 13.01.06.100.01e, the Idaho Fish and Game Commission may use a proclamation to establish binding limits on the take of grizzly bears (Idaho Administrative Code 13.01.06.100.01e).

Table 2 cross-references the aforementioned requirements in the proposed rule with the content of each State's regulations. The full text of the State regulations and the Tri-State MOA can be found on the Internet at *http://www.regulations.gov* under Docket No. FWS–R6–ES–2016–0042 or *https://www.fws.gov/mountain-prairie/es/grizzlybear.php;* or upon request from the Grizzly Bear Recovery Office (see **FOR FURTHER INFORMATION CONTACT**).

TABLE 2—CROSS-REFERENCE BETWEEN THE REGULATORY REQUIREMENTS IN THE PROPOSED RULE TO REMOVE THE GREATER YELLOWSTONE ECOSYSTEM POPULATION OF GRIZZLY BEARS FROM LISTING UNDER THE ENDANGERED SPECIES ACT (81 FR 13174; MARCH 11, 2016) AND THE STATE GRIZZLY BEAR REGULATORY MECHANISMS

Required element described in the proposed rule	Montana (Tri-state memorandum of agreement (MOA) and Grizzly Bear hunting regulations)	Wyoming (Chapter 67 of WY Game and Fish Commission regulations)	Idaho (ID Fish and Game Commission proclamation)
Requirement 1: Suspension of all discretionary mortality inside the Demographic Monitoring Area (DMA), except if required for human safety, if the model-averaged Chao2 population estimate falls below 600.	Tri-State MOA: section IV(2)(a)(i), section IV(2)(c)(i), section IV(4)(a), and section IV(6).	Section 4(c)	Section 2.
Requirement 2: Suspension of grizzly bear hunting inside the DMA if total mortality limits for any sex/age class (as per tables 1, 2, and 3 in the proposed rule) are met at any time during the year (these mortality limits are reiterated in table 1 in this document).	Tri-State MOA: section IV(2)(c), section IV(4)(a), and section IV(6).	Section 4(d)	Section 3 and section 5.
Requirement 3: Prohibition of recreational harvest of female grizzly bears with young.	Tri-State MOA: section IV(4)(b); Grizzly Bear Hunting Regulations, pp. 4 and 7.	Section 4(e)	Section 4.
Requirement 4: In a given year, allowance of discretionary mortality only if non-discretionary mortality (e.g., mortality from illegal kills, self-defense, calculated unknown/unreported mortalities, natural mortalities, and other causes such as vehicle collisions) does not meet or exceed total mortality limits for that year.	Tri-State MOA: section IV(2)(c), section IV(4)(a), and section IV(6).	Section 4(d) and section 4(k).	Section 5.
Requirement 5: Provisions to ensure that any mortality that exceeds total mortality limits in any year will be subtracted from that age/sex class total mortality limit for the following year to ensure that long-term mortality levels remain within prescribed limits inside the DMA.	Tri-State MOA: section IV(2)(c).	Section 4(g), section 4(k), and section 4(l).	Section 6.

Service Assessment

The Service has reviewed the recently finalized State regulations governing the management of grizzly bears in the GYE and the regulation of human-caused mortality (including the Tri-State MOA, Montana's Grizzly Bear Hunting Regulations, Chapter 67 of Wyoming's Game and Fish Commission regulations, and Idaho's Fish and Game Commission Proclamation). Our preliminary assessment is that these documents are consistent with the letter or intent of the regulatory requirements regarding human-caused mortality that we outlined in the proposed rule. Thus, based on our review, we believe the regulatory framework in Montana, Wyoming, and Idaho, in combination with the Tri-State MOA, will maintain a recovered population of grizzly bears in the GYE. We are accepting public comments on these State regulations and our preliminary assessment that they provide adequate regulatory mechanisms such that we can conclude that the population no longer meets the definition of threatened under the Endangered Species Act.

Peer Review and Public Comments

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we subjected the proposed delisting rule to peer review. We received submissions from five independent peer reviewers, and their input is available as described under **ADDRESSES**. These peer reviews were conducted by third-party selected scientific experts in large carnivore ecology and management with expertise in one or more of the following areas: population ecology, management, demographics, conservation, and population genetics.

We welcome any comments on the proposed rule in light of these reviews (see compiled reviews in Amec Foster Wheeler, 2016). Previously received public comments, and the data and information they provided, can be found at *http://www.regulations.gov* under Docket No. FWS–R6–ES–2016–0042.

References Cited

A complete list of references cited is available: on the Internet at *http://www.regulations.gov* under Docket No. FWS–R6–ES–2016–0042; from the Service's Mountain Prairie Region Grizzly Bear Web site *https://www.fws.gov/mountain-prairie/es/grizzlybear.php;* or upon request from the Grizzly Bear Recovery Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 16, 2016.

James W. Kurth,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2016–21368 Filed 9–6–16; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 81, No. 173
Wednesday, September 7, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–SC–16–0087]

Fruit and Vegetable Industry Advisory Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, the Agricultural Marketing Service (AMS) is announcing a meeting of the Fruit and Vegetable Industry Advisory Committee (Committee). The meeting is being convened to examine the full spectrum of fruit and vegetable industry issues and to provide recommendations and ideas to the Secretary of Agriculture on how the U.S. Department of Agriculture (USDA) can tailor programs and services to better meet the needs of the U.S. produce industry. The meeting is open to the public. This notice sets forth the schedule and location for the meeting.

DATES: Tuesday, October 25, 2016, from 8:30 a.m. to 5:00 p.m. Eastern Time, and Wednesday, October 26, 2016, from 8:30 a.m. to 1:00 p.m., Eastern Time.

ADDRESSES: The Committee meeting will be held in the Tidewater I&II Conference Room at the Hyatt Regency Crystal City Hotel @Ronald Reagan National Airport, 2799 Jefferson Davis Highway, Arlington, Virginia, 22202.

FOR FURTHER INFORMATION CONTACT: Pamela Stanziani, Designated Federal Official, USDA, AMS, Specialty Crops Program; Telephone: (202) 720–3334; Email: *pamela.stanziani@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (FACA) (5 U.S.C. App.), the Secretary of Agriculture (Secretary) established the Committee in 2001, to examine the full spectrum of issues faced by the fruit and vegetable industry and to provide suggestions and ideas to the Secretary on how USDA can tailor its programs to meet the fruit and vegetable industry's needs. The Committee was re-chartered in July 2015, for a two-year period.

AMS Deputy Administrator for the Specialty Crops Program, Charles Parrott, serves as the Committee's Manager. Representatives from USDA mission areas and other government agencies affecting the fruit and vegetable industry are periodically called upon to participate in the Committee's meetings as determined by the Committee. AMS is giving notice of the Committee meeting to the public so that they may attend and present their views. The meeting is open to the public.

Public Comments: All written public comments must be submitted electronically by October 1, 2016, for the Committee's consideration to Pamela Stanziani at *pamela.stanziani@ams.usda.gov* or to *www.regulations.gov,* or mailed to: 1400 Independence Avenue SW., Room 2077-South, STOP 0235, Washington, DC 20250–0235. The meeting will be recorded, and information about obtaining a transcript will be provided at the meeting.

Agenda items may include, but are not limited to, welcome and introductions, administrative matters, progress reports from committee working group chairs and/or vice chairs, potential working group recommendation discussion and proposal, and presentations by subject matter experts.

Meeting Accommodations: The Hyatt Regency Crystal City Hotel @Ronald Reagan National Airport is ADA compliant and provides reasonable accommodations to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in this public meeting, please notify Pamela Stanziani, Designated Federal Official, at *pamela.stanziani@ams.usda.gov* or (202) 720–3334, by September 30, 2016. Determinations for reasonable accommodations will be made on a case-by-case basis.

Dated: September 1, 2016.

Dana Coale,

Associate Administrator.

[FR Doc. 2016–21425 Filed 9–6–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Uinta-Wasatch-Cache Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Uinta-Wasatch-Cache Resource Advisory Committee (RAC) will meet in South Jordan, Utah. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following Web site: *http://www.fs.usda.gov/main/uwcnf/workingtogether/advisorycommittees.*

DATES: The meeting will be held on September 28, 2016, from 6:00 p.m.–8:30 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Uinta-Wasatch-Cache Forest Service Office, Room #314, 857 West South Jordan Parkway, South Jordan, Utah. The meeting will also be available via teleconference. For anyone who would like to attend via teleconferenc, please visit the Web site listed in the **SUMMARY** section or contact the person listed under the **FOR INFORMATION CONTACT** section.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received on the Web site listed in the **SUMMARY** section.

FOR FURTHER INFORMATION CONTACT: Loyal Clark, RAC Coordinator by phone at 801–999–2113, or via email at *lfclark@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information

Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and recommend project proposals.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 14, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Loyal Clark, RAC Coordinator, Uinta-Wasatch-Cache National Forest, 857 West South Jordan Parkway, South Jordan, Utah 84095; by email to *lfclark@fs.fed.us,* or via facsimile to 801–253–8118.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: August 31, 2016.

David C. Whittekiend,

Forest Supervisor.

[FR Doc. 2016–21423 Filed 9–6–16; 8:45 am]

BILLING CODE 3411–15–P

CIVIL RIGHTS COMMISSION

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission Business Meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, and the Federal Advisory Committee Act (FACA), that a Business Meeting of the U.S. Commission on Civil Rights will be convened at 10 a.m. on Friday, September 9, 2016.

DATES: Friday, September 9, 2016, at 10 a.m. EST.

ADDRESSES: National Place Building, 1331 Pennsylvania Ave. NW., 11th Floor, Suite 1150, Washington, DC 20425 (Entrance on F Street NW.).

FOR FURTHER INFORMATION CONTACT: Brian Walch, Communications and Public Engagement Director. Telephone: (202) 376–8371; TTY: (202) 376–8116; Email: *publicaffairs@usccr.gov.*

SUPPLEMENTARY INFORMATION: This business meeting is open to the public.

Hearing-impaired persons who will attend the briefing and require the services of a sign language interpreter should contact Pamela Dunston at (202) 376–8105 or at signlanguage@usccr.gov at least five business days before the scheduled date of the meeting.

Meeting Agenda

I. Approval of Agenda

II. Business Meeting

A. Program Planning

- Discussion and Vote on Press Release on National Voting Rights Act Report
- Discussion and Vote on Press Release on 2016 Statutory Enforcement Report
- Discussion and Vote on Commission Statement on Hispanic Heritage Month
- Update on Preliminary 60th Anniversary Planning by Brian Walch

B. State Advisory Committees.

- Missouri SAC Chair, S. David Mitchell presentation of the Committee Report on Police—Community Relations in Missouri
- State Advisory Committee Appointments
- North Carolina

C. Management and Operations.

- Discussion on October Meeting with Special Guest Sylvia Mendez to discuss her experiences as the plaintiff in *Mendez* v. *Westminster.*
- Completion of Web site Migration.
- Staff Director's Report.

III. Adjourn Meeting

Dated: September 2, 2016.

Brian Walch,

Director, Communications and Public Engagement.

[FR Doc. 2016–21670 Filed 9–2–16; 4:15 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–010]

Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Effective September 7, 2016.

FOR FURTHER INFORMATION CONTACT: Jeff Pedersen, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–2769.

SUPPLEMENTARY INFORMATION:

Background

On February 18, 2015, the Department of Commerce (the Department) published in the **Federal Register** the antidumping duty order on certain crystalline silicon photovoltaic products from the People's Republic of China (PRC) (Order).[1] On February 3, 2016, the Department published a notice of opportunity to request an administrative review of the Order.[2] The Department received multiple timely requests for an administrative review of the Order. On April 7, 2016, in accordance with section 751(a) of Tariff Act of 1930, as amended (the Act), the Department published in the **Federal Register** a notice of the initiation of an administrative review of the Order.[3] The administrative review was initiated with respect to 27 companies or groups of companies, and covers the period from July 31, 2014, through January 31, 2016. Requesting parties have subsequently timely withdrawn all review requests for 18 of the 27 companies or groups of companies for which the Department initiated a review, as discussed below.

Rescission of Review, in Part

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested the review withdraws its request within 90 days of the date of publication of the notice of initiation of the requested review. All requesting parties withdrew their respective requests for an administrative review of the 18 companies or groups of companies listed in the Appendix to this notice within 90 days of the date of publication of the *Initiation Notice*. Accordingly, the Department is rescinding this review with respect to these companies, in accordance with 19 CFR 351.213(d)(1).[4] The administrative review will continue with respect to all other firms for which a review was requested and initiated.

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[1] *See Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Antidumping Duty Order; and Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 80 FR 8592 (February 18, 2015).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 81 FR 5712, 5713 (February 3, 2016).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 20324 (April 7, 2016.

Assessment

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. For the companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notification to Importers

This notice serves as the only reminder to importers whose entries will be liquidated as a result of this rescission notice, of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's assumption that the reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 751(a)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: August 31, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

APPENDIX

- Jinko Solar Co. Ltd./Jinko Solar Import and Export Co., Ltd.[5]
- Canadian Solar International Limited
- Canadian Solar Manufacturing (Changshu), Inc.
- Canadian Solar Manufacturing (Luoyang) Inc.
- Risen Energy Co., Ltd.
- Zhejiang Jinko Solar Co., Ltd.
- Yingli Energy (China) Company Limited
- Yingli Green Energy International Trading Limited
- Baoding Jiasheng Photovoltaic Technology Co. Ltd.
- Baoding Tianwei Yingli New Energy Resources Co., Ltd.
- Beijing Tianneng Yingli New Energy Resources Co. Ltd.
- Hainan Yingli New Energy Resources Co., Ltd.
- Hengshui Yingli New Energy Resources Co., Ltd.
- Lixian Yingli New Energy Resources Co., Ltd.
- Shenzhen Yingli New Energy Resources Co., Ltd.
- Tianjin Yingli New Energy Resources Co., Ltd.
- Shanghai BYD Co., Ltd.
- Canadian Solar Inc.

[FR Doc. 2016–21499 Filed 9–6–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–820]

Certain Hot-Rolled Carbon Steel Flat Products From India: Notice of Preliminary Results of Antidumping Duty Administrative Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products from India (hot-rolled steel). The period of review (POR) is December 1, 2014, through November 30, 2015. This review covers four companies, Ispat Industries Ltd. (Ispat), JSW Steel Ltd. (JSW), JSW Ispat Steel Ltd. (JSW Ispat), and Tata Steel Ltd. (Tata). We preliminarily determine that Ispat, JSW, JSW Ispat, and Tata had no entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results.

DATES: *Effective:* September 7, 2016.

FOR FURTHER INFORMATION CONTACT: George McMahon or Eric Greynolds, AD/CVD Operations Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1167 and (202) 482–6071, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise subject to this order is certain hot-rolled carbon steel flat products from India. The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90.

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[4] *See* Appendix. As stated in *Change in Practice in NME Reviews,* the Department will no longer consider the non-market economy (''NME'') entity as an exporter conditionally subject to administrative reviews. *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013) (''*Change in Practice in NME Reviews*''). The PRC-wide entity is not subject to this administrative review because no interested party requested a review of the entity. *See Initiation Notice.*

[5] In the final determination of the underlying investigation we treated Jinko Solar Co. Ltd. and Jinko Solar Import and Export Co., Ltd. together with Renesola Jiangsu Ltd. and Renesola Zhejiang Ltd. as a single entity. *See Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 79 FR 76970 (December 23, 2014).

Products subject to this order may also enter under HTSUS subheadings: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise subject to this order is dispositive.[1]

Methodology

The Department conducted this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). For a full description of the methodology underlying our preliminary results, see the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached as an Appendix to this notice.

Preliminary Determination of No Shipments

Ispat, JSW, JSW Ispat, and Tata submitted timely-filed certifications that they had no exports, sales, or entries of subject merchandise during the POR,[2] and a query of U.S. Customs and Border Protection (CBP) data did not show any POR entries of subject merchandise by Ispat, JSW, JSW Ispat, and Tata.[3] In addition, CBP did not identify any entries of subject merchandise from Ispat, JSW, JSW Ispat, and Tata during the POR in response to an inquiry from the Department asking CBP for such information.[4] Based on the foregoing, the Department preliminarily determines that Ispat, JSW, JSW Ispat, and Tata had no shipments of the subject merchandise, and, therefore, no reviewable transactions, during the POR.

Assessment Rate

Upon issuance of the final results of this administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department intends to issue assessment instructions to CBP 15 days after publication of the final results of this review.

In accordance with the Department's "automatic assessment" practice,[5] for entries of subject merchandise during the POR produced by each respondent for which they did not know that their merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided by section 751(a)(2) of the Act: (1) The cash deposit rates for respondents noted above, which claimed no shipments, will remain unchanged from the rates assigned to the companies in the most recently completed review of the companies; (2) for merchandise exported by producers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 38.72 percent, the all-others rate established in the less-than-fair value investigation, as amended. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit cases briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[6] Parties who submit comments are requested to submit: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[7] All briefs must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, using Enforcement and Compliance's ACCESS system within 30 days of publication of this notice.[8] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined.[9] Parties should confirm by telephone the date, time, and location of the hearing.

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[1] A full description of the scope of the order is contained in the memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, titled "Certain Hot-Rolled Carbon Steel Flat Products from India: Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review; 2014–2015" (Preliminary Decision Memorandum), dated concurrently with and adopted by this notice.

[2] *See* Letter from JSW titled, "Certain Hot-Rolled Carbon Steel Flat Products from India: No Shipment Certification of JSW Steel Ltd." (February 12, 2016). JSW's letter stated, "{p}lease note that this statement applies as well to the companies listed in the Department's initiation notice as Ispat Industries Ltd. and JSW Ispat Steel Ltd. Those companies no longer exist as separate entities, but have been merged into JSW Steel." *See also* Letter from Tata titled, "Antidumping Duty Review of Certain Hot-Rolled Carbon Steel Flat Products from India: Tata Steel Limited Certification of No Shipments" (March 11, 2016); *see also Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 6832 (February 9, 2016).

[3] *See* Memorandum to the File titled, "Customs and Border Protection (CBP) Data Query Results," dated February 17, 2016.

[4] *See* CBP Message Numbers: 6083305 and 6083306, dated March 23, 2016.

[5] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*).

[6] *See* 19 CFR 351.309(d).

[7] *See* 19 CFR 351.309(c)(2), (d)(2).

[8] *See* 19 CFR 351.310(c).

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their case briefs, within 120 days after issuance of these preliminary results.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and increase the subsequent assessment of the antidumping duties by the amount of antidumping duties reimbursed.

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 26, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Results Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Preliminary Determination of No Shipments
V. Recommendation

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[9] *See* 19 CFR 351.310.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–433–812, A–423–812, A–351–847, A–580–887, A–583–858, A–489–828, C–580–888]

Certain Carbon and Alloy Steel Cut-to-Length Plate From Austria, Belgium, Brazil, the Republic of Korea, Taiwan, and Turkey; Antidumping and Countervailing Duty Investigations: Preliminary Determinations of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that critical circumstances exist for imports of certain carbon and alloy steel cut-to-length plate (CTL plate) from certain producers and exporters from Austria, Belgium, Brazil, Taiwan, and Turkey.

DATES: Effective September 7, 2016.

FOR FURTHER INFORMATION CONTACT: Edythe Artman at (202) 482–3931 (Austria), Elizabeth Eastwood at (202) 482–3874 (Belgium), Mark Kennedy at (202) 482–7883 (Brazil), Steve Bezirganian at (202) 482–1131 (Korea–AD), John Corrigan at (202) 482–7438 (Korea–CVD), Tyler Weinhold at (202) 482–1121 (Taiwan), or Dmitry Vladimirov at (202) 482–0665 (Turkey), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

In response to petitions filed on April 8, 2016,[1] the Department of Commerce (the Department) initiated antidumping duty (AD) investigations concerning imports of CTL plate from Austria, Belgium, Brazil, the People's Republic of China (PRC), France, the Federal Republic of Germany (Germany), Italy, Japan, the Republic of Korea (Korea), South Africa, Taiwan, and Turkey[2] and countervailing duty (CVD) investigations concerning CTL plate from Brazil, the PRC, and Korea.[3] On July 26, 2016, the Department received timely allegations, pursuant to sections 703(e)(1) and 733(e)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.206, that critical circumstances exist with respect to imports of CTL plate from Austria, Belgium, Brazil, Korea, Taiwan, and Turkey.[4] Based on information provided by the petitioners, data placed on the record of these investigations by the mandatory respondents, and data collected by the Department from Global Trade Atlas (GTA), the Department preliminarily determines that critical circumstances exist for imports of CTL plate from certain producers and exporters from Austria, Belgium, Brazil, Taiwan, and Turkey.

Pursuant to 19 CFR 351.206(c)(2), the petitioners requested that the Department issue a preliminary affirmative determination of critical circumstances on an expedited basis. In accordance with sections 703(e)(1) and 733(e)(1) of the Act, because the petitioners submitted their critical circumstances allegations more than 20 days before the scheduled date of the final determination, the Department must promptly issue preliminary critical circumstances determinations.

Section 703(e)(1) of the Act provides that the Department will determine that critical circumstances exist in CVD investigations if there is a reasonable basis to believe or suspect: (A) That "the alleged countervailable subsidy" is inconsistent with the Agreement on Subsidies and Countervailing Measures (SCM Agreement) of the World Trade Organization, and (B) that "there have been massive imports of the subject merchandise over a relatively short period." Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist in AD investigations if there is a reasonable basis to believe or suspect: (A)(i) That "there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise," or (ii) that "the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales," and (B) that "there have been massive imports of the subject merchandise over a relatively short period." Section 351.206(h)(2) of the Department's regulations provides that, generally, imports must increase by at least 15 percent during the "relatively short period" to be considered "massive" and section 351.206(i) defines a "relatively short period" as normally being the period beginning on the date the proceeding begins (*i.e.,* the date the petition is filed)[5] and ending at least three months later.[6] The regulations also provide, however, that, if the Department "finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely," the Department "may consider a period of not less than three months from that earlier time."[7]

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[1] *See* Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, Brazil, the People's Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of South Africa, Taiwan, and Turkey—Petitions for the Imposition of Antidumping and Countervailing Duties, dated April 8, 2016 (collectively, the petitions). The petitioners for these investigations are ArcelorMittal USA LLC, Nucor Corporation, and SSAB Enterprises, LLC (the petitioners).

[2] *See Certain Carbon and Alloy Steel Cut-To-Length Plate From Austria, Belgium, Brazil, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the People's Republic of China, South Africa, Taiwan, and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations,* 81 FR 27089 (May 5, 2016).

[3] *See Certain Carbon and Alloy Steel Cut-to-Length Plate From Brazil, the People's Republic of China, and the Republic of Korea: Initiation of Countervailing Duty Investigations,* 81 FR 27098 (May 5, 2016).

[4] *See* Certain Carbon and Alloy Steel Cut-To-Length Plate From Austria, Belgium, Brazil, the Republic of Korea, Taiwan, and Turkey: Critical Circumstances Allegations, July 26, 2016 (Allegations).

Alleged Countervailable Subsidies Are Inconsistent With the SCM Agreement

To determine whether an alleged countervailable subsidy is inconsistent with the SCM Agreement, in accordance with section 703(e)(1)(A) of the Act, the Department considered the evidence currently on the record of the Korea CVD investigation. Specifically, as determined in our initiation checklist, the following subsidy programs, alleged in the petition and supported by information reasonably available to the petitioners, appear to be either export contingent or contingent upon the use of domestic goods over imported goods, which would render them inconsistent with the SCM Agreement: Korean Export-Import Bank Short-Term Export Credits; Korean Export-Import Bank Export Factoring; Korean Export-Import Bank Export Loan Guarantees; Korean Export-Import Bank Trade Bill Rediscounting Program; Korea Development Bank (KDB) Short-Term Discounted Loans for Export Receivables; Loans under the Industrial Base Fund; Korea Trade Insurance Corporation (K–SURE) Short-Term Export Credit Insurance; and K–SURE Export Credit Guarantees.[8]

Therefore, the Department preliminarily determines for purposes of this critical circumstances determination that there are alleged subsidies in the Korea CVD investigation that are inconsistent with the SCM Agreement.

History of Dumping and Material Injury/Knowledge of Sales Below Fair Value and Material Injury

In order to determine whether there is a history of dumping pursuant to section 733(e)(1)(A)(i) of the Act, the Department generally considers current or previous AD orders on subject merchandise from the country in question in the United States and current orders imposed by other countries with regard to imports of the same merchandise.[9] Although the Department has not previously issued, nor are we aware of any other World Trade Organization member issuing, AD orders on CTL plate from the six countries, the petitioners point to a pattern of dumping of similar merchandise by companies subject to these investigations.

To determine whether importers knew or should have known that exporters were selling at less than fair value, we typically consider the magnitude of dumping margins, including margins alleged in petitions.[10] The Department has found margins of 15 to 25 percent (depending on whether sales are export price sales or constructed export price sales) to be sufficient for this purpose.[11] The Department initiated these AD investigations based on the following estimated dumping margins: (1) Austria ranges from 35.50 to 121.90 percent; (2) Belgium is 51.78 percent; (3) Brazil is 74.52 percent; (8) Korea ranges from 44.70 to 248.64; (10) Taiwan ranges from 8.30 to 77.13 percent; and (11) Turkey ranges from 34.03 to 50.00 percent.[12] All of these margins are above the 15 to 25 percent threshold.[13] Therefore, on that basis, we preliminarily conclude that importers knew or should have known that exporters in all six countries were selling subject merchandise at less than fair value.

To determine whether importers knew or should have known that there was likely to be material injury, we typically consider the preliminary injury determinations of the International Trade Commission (ITC).[14] If the ITC finds material injury (rather than the threat of injury), we normally find that the ITC's determination provided importers with sufficient knowledge of injury. In these investigations, the ITC's preliminary finding of material injury by reason of imports of CTL plate from, *inter alia,* Austria, Belgium, Brazil, Korea, Taiwan, and Turkey is sufficient to impute knowledge of the likelihood of material injury for each of these countries.[15]

Massive Imports

In determining whether there have been "massive imports" over a "relatively short period," pursuant to sections 703(e)(1)(B) and 733(e)(1)(B) of the Act, the Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.,* the "base period") to a comparable period of at least three months following the filing of the petition (*i.e.,* the "comparison period"). Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.

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[5] *See* 19 CFR 351.102(b)(40) (providing that a proceeding begins on the date of the filing of a petition).

[6] *See* 19 CFR 351.206(i).

[7] *Id.*

[8] *See* Korea CVD Initiation Checklist, April 28, 2016, at 7–16.

[9] *See Certain Oil Country Tubular Goods From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination,* 74 FR 59117, 59120 (November 17, 2009) unchanged in *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping,* 75 FR 20335 (April 19, 2010).

[10] *See, e.g., Notice of Preliminary Determinations of Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products from Australia, the People's Republic of China, India, the Republic of Korea, the Netherlands, and the Russian Federation,* 67 FR 19157, 19158 (April 18, 2002) (unchanged in the final determination).

[11] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China,* 62 FR 31972, 31978 (June 11, 1997) (unchanged in the final determination) and *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 42672 (July 16, 2004) (unchanged in the final determination).

[12] *See CTL Plate Initiation of Less-Than-Fair-Value Investigations,* 81 FR 27089, 27094. These margins differ from those in the petitions with respect to Austria, Brazil, Korea, and Taiwan.

[13] Although the lowest margin for Taiwan is below the threshold, the Taiwan margins ranged as high as 77.13 percent which is well above the threshold.

[14] *See, e.g., Certain Potassium Phosphate Salts from the People's Republic of China: Preliminary Affirmative Determination of Critical Circumstances in the Antidumping Duty Investigation,* 75 FR 24572, 24573 (May 5, 2010), unchanged in *Certain Potassium Phosphate Salts from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Termination of Critical Circumstances Inquiry,* 75 FR 30377 (June 1, 2010).

[15] *See Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, Brazil, China, France, Germany, Italy, Japan, Korea, South Africa, Taiwan, and Turkey,* Inv. Nos. 701–TA–559–561 and 731–TA–1317–1328 (Preliminary), USITC Publication 4615, May 2016) at 1.

Thus, because the petitions were filed on April 8, 2016, in order to determine whether there has been a massive surge in imports for each cooperating mandatory respondent, the Department compared the total volume of shipments during the period April 2016 through June 2016 with the volume of shipments during the preceding three-month period of January 2016 through March 2016. For Brazil and Turkey, because the mandatory respondents refused to participate in the investigations, we determine, on the basis of adverse facts available, that there has been a massive surge in imports. For "all-others," the Department relied on GTA data which demonstrates that the volume of CTL plate from Brazil and Turkey increased massively in the three month period April 2016 through June 2016 when compared to the prior three-month period.[16]

For the cooperating respondents in the investigations on Austria, Belgium, Korea, and Taiwan, we compared the total volume of shipments during the period April 2016 through June 2016 with the volume of shipments during the preceding three-month period of January 2016 through March 2016. For "all-others," the Department compared GTA data for the same time periods.[17] We subtracted shipments reported by the mandatory respondents from the GTA data. With respect to Korea, the shipment data do not demonstrate massive surges in imports for any producers/exporters. Therefore, we are reaching a preliminary negative critical circumstances determination with respect to Korea. With respect to Austria, Belgium, and Taiwan, we preliminarily determine the following producers/exporters had massive surges in imports.[18]

- Austria (A–433–812): Voestalpine Grobblech GmbH, voestalpine Steel & Service Center GmbH, Bohler Edelstahl GmbH & Co. KG, BOHLER Bleche GmbH & Co. KG, Bohler Uddeholm Corporation, and Strudell Industries, Inc. (collectively, Voestalpine);
- Belgium (A–423–812): Industeel Belgium SA and NLMK Clabecq
- Taiwan (A–583–858): China Steel Corporation and All-Other producers/exporters.

Conclusion

Based on the criteria and findings discussed above, we preliminarily determine that critical circumstances exist with respect to imports of CTL plate shipped by certain producers/exporters. Our findings are summarized as follows.

Country	Case No.	Affirmative preliminary critical circumstances determinations	Negative preliminary critical circumstances determinations
Austria	A–433–812	Voestalpine	All-Other producers/exporters.
Belgium	A–423–812	Industeel Belgium SA, NLMK Clabecq	All-Other producers/exporters.
Brazil	A–351–847	All producers/exporters.	
Korea	A–580–887		POSCO/POSCO Daewoo Corporation, All-Other producers/exporters.
Korea	C–580–888		POSCO/POSCO Daewoo Corporation, All-Other producers/exporters.
Taiwan	A–583–858	China Steel Corporation All-Other producers/exporters.	Shang Chen Steel Co., Ltd.
Turkey	A–489–828	All producers/exporters.	

Final Critical Circumstances Determinations

We will issue final determinations concerning critical circumstances when we issue our final countervailing duty and less than fair value determinations. All interested parties will have the opportunity to address these determinations in case briefs to be submitted after completion of the preliminary countervailing duty and less than fair value determinations.

ITC Notification

In accordance with sections 703(f) and 733(f) of the Act, we will notify the ITC of our determinations.

Suspension of Liquidation

In accordance with section 733(e)(2) of the Act, because we preliminarily found that critical circumstances exist with regard to exports made by certain producers and/or exporters, if we make an affirmative preliminary determination that sales at less than fair value have been made by these same producers/exporters at above *de minimis* rates,[19] we will instruct Customs and Border Protection (CBP) to suspend liquidation of all entries of subject merchandise from these producers/exporters that are entered, or withdrawn from warehouse, for consumption on or after the date that is 90 days prior to the effective date of "provisional measures" (*i.e.*, the date of publication in the **Federal Register** of the notice of an affirmative preliminary determination of sales at less than fair value at above *de minimis* rates). At such time, we will also instruct CBP to require a cash deposit equal to the estimated preliminary dumping margins reflected in the preliminary determination published in the **Federal Register**. This suspension of liquidation will remain in effect until further notice.

Because we preliminarily found that critical circumstances do not exist with respect to the CVD investigation of CTL plate from Korea, we will not order any retroactive suspension of liquidation under section 703(e)(2) of the Act in the event of an affirmative preliminary countervailing duty determination in this investigation.

This notice is issued and published pursuant to section 777(i) of the Act and 19 CFR 351.206(c)(2).

Dated: August 30, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–21501 Filed 9–6–16; 8:45 am]

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[16] *See* respective preliminary critical circumstances memoranda for each proceeding, dated concurrently with this notice.

[17] The Department gathered GTA data under the following harmonized tariff schedule numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000.

[18] *See* respective preliminary critical circumstances memoranda for each proceeding, dated concurrently with this notice.

[19] The preliminary determinations concerning sales at less than fair value are currently due on September 15, 2016.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Alaska American Fisheries Act (AFA) Permits.

OMB Control Number: 0648–0393.

Form Number(s): None.

Type of Request: Regular (extension of a currently approved information collection).

Number of Respondents: 27.

Average Hours per Response: 30 minutes for Application for AFA Permit Application: Rebuild, Replace, or Remove Vessel; 2 hours for Application for AFA Inshore Catcher Vessel Cooperative Permit; 4 hours for Vessel Contract Fishing Notification; 8 hours for Application for Approval as an Entity Eligible to Receive Transferable Chinook Salmon PSC Allocation; 1 hour for Application to Transfer of Bering Sea Chinook Salmon PSC Allocation.

Burden Hours: 135.

Needs and Uses: This request is for extension of a currently approved information collection.

National Marine Fisheries Service (NMFS) and the North Pacific Fishery Management Council developed regulations under the Magnuson-Stevens Act and the American Fisheries Act (AFA) to govern commercial fishing for Bering Sea and Aleutian Islands Management Area (BSAI) pollock according to the requirements of the AFA. These regulations are necessary to achieve the AFA's objective of decapitalization and rationalization of the BSAI pollock fishery.

With exceptions noted below, all participants in the AFA pollock fishery are already permitted and the permits are issued with an indefinite expiration date. The permanent AFA permits are: AFA catcher vessel, AFA catcher/processor, AFA mothership, and AFA inshore processor. The permit exceptions are issued annually—the inshore vessel cooperative permit and inshore vessel contract fishing permit. In addition, the AFA vessel replacement application may be submitted to NMFS at any time.

Affected Public: Business or other for-profit organizations.

Frequency: Annually and on occasion.

Respondent's Obligation: Required to obtain or retain benefits.

This information collection request may be viewed at reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: September 1, 2016.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2016–21405 Filed 9–6–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Meeting of the Advisory Committee on Commercial Remote Sensing

ACTION: Notice of meeting.

SUMMARY: The Advisory Committee on Commercial Remote Sensing (ACCRES) will meet September 21, 2016. The meeting will be held, in accordance with Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and with Section 552b(c)(1) of Title 5, United States Code.

DATES: The meeting is scheduled as follows: September 21, 2016, 9:00 a.m.–4:00 p.m. The meeting will be open to the public from 9:00 a.m.–12:00 p.m. and a closed session will be held from 1:00 p.m.–4:00 p.m.

ADDRESSES: The public portion of the meeting will be held at The Aerospace Corporation, Gambit Auditorium, Room L0037, 14745 Lee Road, Chantilly, VA 20151.

FOR FURTHER INFORMATION CONTACT: Tahara Dawkins, NOAA/NESDIS/CRSRA, 1335 East West Highway, Room 8260, Silver Spring, Maryland 20910; (301) 713–3385, *Tahara.Dawkins@noaa.gov,* or Samira Patel at (301) 713–7077, *samira.patel@noaa.gov.*

SUPPLEMENTARY INFORMATION: As required by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982) and its implementing regulations, *see* 41 CFR 102–3.155, notice is hereby given of the meeting of ACCRES. ACCRES was established by the Secretary of Commerce (Secretary) on May 21, 2002, to advise the Secretary of Commerce through the Under Secretary of Commerce for Oceans and Atmosphere on matters relating to the U.S. commercial remote sensing space industry and on [the National Oceanic and Atmospheric Administration]'s activities to carry out the responsibilities of the Department of Commerce set forth in the National and Commercial Space Programs Act of 2010 (51 U.S.C. 60101 *et seq.*).

Exceptional Circumstances

Pursuant to 41 CFR 102–3.150, the notice for this meeting is being given fewer than 15 calendar days prior to the meeting due to the following exceptional circumstances: (i) The review and clearance process for the Notice of Determination to partially close the meeting, which is required under 41 CFR 102–3.155, involved administrative and timing limitations, including in this instance the additional delay resulting from the Labor Day holiday; and (ii) due to preexisting commitments and statutorily-established deadlines, delaying the September 21, 2016 meeting would make it substantially more difficult for ACCRES to complete its required consultation on the report mandated by Section 202 of the *U.S. Commercial Space Launch and Competitiveness Act,* Public Law 114–90.

Purpose of the Meeting and Matters To Be Considered

The first part of the meeting will be open to the public pursuant to Section 10(a)(1) of the Federal Advisory Committee Act, 5 U.S.C. App. 2 (FACA). During the open portion of the meeting, the Committee will receive updates on NOAA's Commercial Remote Sensing Regulatory Affairs activities. The Committee will also be available to receive public comments on its activities.

The second part of the meeting will be closed to the public pursuant to Section 10(d) of FACA as amended by Section 5(c) of the Government in Sunshine Act, Public Law 94–409 and in accordance with Section 552b(c)(1) of Title 5, United States Code, which authorizes closure of meetings likely to disclose matters that are "specifically authorized under criteria established by Executive order to be kept secret in the interests of national defense or foreign policy and . . . in fact properly classified pursuant to such Executive order." The part of the meeting which will be closed will address the ongoing review and implementation of the 2015 U.S. Commercial Space Launch Competitiveness Act and related national security, foreign policy concerns and future technology considerations for NOAA's licensing decisions. These discussions are likely to disclose matters that are specifically authorized under criteria established by Executive Order 13526 to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order. In compliance with Section 10(d) of FACA and 41 CFR 102–3.155, ACCRES has obtained an agency determination of closure, and the notice of this determination is available upon request.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for special accommodations may be directed to ACCRES, NOAA/NESDIS/CRSRA, 1335 East West Highway, Room 8260, Silver Spring, Maryland 20910.

Additional Information and Public Comments

Any member of the public who plans to attend the open meeting should RSVP to Samira Patel at (301) 713–7077, *samira.patel@noaa.gov* by September 15, 2016. Any member of the public wishing further information concerning the meeting or who wishes to submit oral or written comments should contact Tahara Dawkins, Designated Federal Officer for ACCRES, NOAA/NESDIS/CRSRA, 1335 East West Highway, Room 8260, Silver Spring, Maryland 20910. Copies of the draft meeting agenda can be obtained from Samira Patel at (301) 713–7077, fax (301) 713–1249, or email *samira.patel@noaa.gov.*

ACCRES expects that public statements presented at its meetings will not be repetitive of previously-submitted oral or written statements. In general, each individual or group making an oral presentation may be limited to a total time of five minutes. Written comments (provide at least 20 copies) sent to NOAA/NESDIS/CRSRA on or before September 21, 2016 will be provided to Committee members in advance of the meeting. Comments received too close to the meeting date will normally be provided to Committee members at the meeting.

Stephen M. Volz,

Assistant Administrator for Satellite and Information Services.

[FR Doc. 2016–21461 Filed 9–6–16; 8:45 am]

BILLING CODE 3510–HR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0649–XE863

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold a meeting of its Ad Hoc Red Snapper Charter Advisory Panel (AP).

DATES: The meeting will convene Monday, September 26, 2016, from 1 p.m. to 5 p.m. and Tuesday, September 27, 2016, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Doubletree New Orleans Airport hotel, located at 2150 Veterans Memorial Boulevard, Kenner, LA 70062; telephone: (504) 467–3111.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. Ava Lasseter, Anthropologist, Gulf of Mexico Fishery Management Council; *ava.lasseter@gulfcouncil.org;* telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The items of discussion on the agenda are as follows:

Ad Hoc Red Snapper Charter Advisory Panel Agenda, Monday, September 26, 2016, 1 p.m.–5 p.m., and Tuesday, September 27, 2016, 8:30 a.m.–5 p.m.

I. Adoption of Agenda

II. Approval of March 2016 Ad Hoc Red Snapper Charter AP meeting summary

III. Evaluation of proposed program to distribute harvest tags to anglers for use on charter vessels

IV. Draft Amendment 41: Red Snapper Management for Federally Permitted Charter Vessels, overview and status update

V. Review program goals and objectives, and provide recommendations to the Council on the design of a Red Snapper Management Program for Charter Vessels

VI. Modifications to Charter Vessel and Headboat Reporting Requirements Generic Amendment, comments and recommendations

VII. Other Business

—Meeting Adjourns—

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on the Council's file server. To access the file server, the URL is *https://public.gulfcouncil.org:5001/webman/index.cgi,* or go to the Council's Web site and click on the File Server link in the lower left of the Council Web site (*http://www.gulfcouncil.org*). The username and password are both "gulfguest". Click on the "Library Folder", then scroll down to "Ad Hoc Red Snapper Charter AP".

The meeting will be webcast over the internet. A link to the webcast will be available on the Council's Web site, *http://www.gulfcouncil.org.*

Although other non-emergency issues not on the agenda may come before the Advisory Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Advisory Panel will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Gulf Council Office (see **ADDRESSES**), at least 5 working days prior to the meeting.

Dated: September 1, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–21433 Filed 9–6–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE862

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold two Coral Grant Stakeholder Engagement Meetings to educate

fishermen using bottom contacting gear on the importance of coral reef habitats and to gather input on potential coral protection mechanisms and proposed areas that may warrant Habitat Area of Particular Concern designation.

DATES: These meetings will be held September 26 and 27, 2016; and will begin at 6 p.m. and will conclude no later than 9 p.m. For specific dates and times, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The public documents can be obtained by contacting the Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607; (813) 348–1630 or on their Web site at *www.gulfcouncil.org*.

Meeting addresses: The stakeholder engagement meetings will be held in Houma, LA and Bayou La Batre, AL. For specific locations, see **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Douglas Gregory, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: Council staff will give a brief presentation on coral reef habitats in the Gulf of Mexico and present information on potential coral protection mechanisms. Following the presentation, Council staff will open the meeting for questions and public comments on proposed areas that may warrant Habitat Area of Particular Concern designation. The schedule is as follows:

Locations, Schedules, and Agendas

Monday, September 26, 2016; Courtyard Marriott, 142 Library Drive, Houma, LA 70360; telephone: (985) 223–8996.

Tuesday, September 27, 2016; Bayou La Batre Community Center, 12745 Padgett Switch Road, (County Road 23), Irvington, AL 36544; telephone: (251) 824–7918.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira (see **ADDRESSES**), at least 5 working days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 1, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–21432 Filed 9–6–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–C–2016–0028]

Performance Review Board (PRB)

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: In conformance with the Civil Service Reform Act of 1978, the United States Patent and Trademark Office announces the appointment of persons to serve as members of its Performance Review Board.

ADDRESSES: Director, Human Capital Management, Office of Human Resources, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Anne Mendez at (571) 272–6173.

SUPPLEMENTARY INFORMATION: The membership of the United States Patent and Trademark Office Performance Review Board is as follows:

Russell D. Slifer, Chair, Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office

Frederick W. Steckler, Vice Chair, Chief Administrative Officer, United States Patent and Trademark Office

Andrew H. Hirshfeld, Commissioner for Patents, United States Patent and Trademark Office

Mary Boney Denison, Commissioner for Trademarks, United States Patent and Trademark Office

Anthony P. Scardino, Chief Financial Officer, United States Patent and Trademark Office

John B. Owens II, Chief Information Officer, United States Patent and Trademark Office

Sarah T. Harris, General Counsel, United States Patent and Trademark Office

Shira Perlmutter, Chief Policy Officer and Director for International Affairs, United States Patent and Trademark Office

Bismarck Myrick, Director, Office of Equal Employment Opportunity and Diversity, United States Patent and Trademark Office

Alternates

Sharon R. Marsh, Deputy Commissioner for Trademark Examination Policy, United States Patent and Trademark Office

Andrew I. Faile, Deputy Commissioner for Patent Operations, United States Patent and Trademark Office

Michelle K. Lee,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2016–21434 Filed 9–6–16; 8:45 am]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10 a.m. EDT, Thursday, September 8, 2016.

PLACE: CFTC Headquarters Lobby-Level Hearing Room, Three Lafayette Centre, 1155 21st Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hold this meeting to consider two final rules and a comparability determination. The agenda for this meeting is available to the public and posted on the Commission's Web site at *http://www.cftc.gov*. In the event that the time, date, or place of this meeting changes, an announcement of the change, along with the new time, date, or place of the meeting, will be posted on the Commission's Web site.

CONTACT PERSON FOR MORE INFORMATION: Christopher J. Kirkpatrick, Secretary of the Commission, 202–418–5964.

Christopher J. Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2016–21537 Filed 9–2–16; 11:15 am]

BILLING CODE 6351–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No: CFFPB–2016–0044]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau) is proposing a new generic information collection plan titled, "Generic Information Collection Plan for Surveys Using the Consumer Credit Panel."

DATES: Written comments are encouraged and must be received on or before October 7, 2016 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *OMB:* Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503 or fax to (202) 395–5806. Mailed or faxed comments to OMB should be to the attention of the OMB Desk Officer for the Bureau of Consumer Financial Protection.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or social security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is *available at www.reginfo.gov* (this link active on the day following publication of this notice). Select "information Collection Review," under "Currently under review, use the dropdown menu "Select Agency" and select "Consumer Financial Protection Bureau" (recent submissions to OMB will be at the top of the list). The same documentation is also *available at http://www.regulations.gov.* Requests for additional information should be directed to the Consumer Financial Protection Bureau, (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435–9575, or email: *PRA@cfpb.gov. Please do not submit comments to this email box.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Generic Information Collection Plan for Surveys Using the Consumer Credit Panel.

OMB Control Number: 3170–XXXX.

Type of Review: Request for a new OMB Control Number.

Affected Public: Individuals and Households.

Estimated Number of Respondents: 8,500.

Estimated Total Annual Burden Hours: 4,250.

Abstract: Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Consumer Financial Protection Bureau is charged with researching, analyzing, and reporting on topics relating to the Bureau's mission, including consumer behavior, consumer awareness, and developments in markets for consumer financial products and services. In order to improve its understanding of how consumers engage with financial markets, the CFPB has successfully used the Consumer Credit Panel (CCP), a proprietary sample dataset from one of the national credit reporting agencies, as a frame to survey people about their experiences in consumer credit markets. The Bureau seeks to obtain approval for a generic information collection plan for these types of surveys. Surveys conducted under this generic information collection plan will support the Bureau's research agenda to monitor developments in consumers' financial situations, related changes in their use of financial products, and the impacts that these decisions have on their balance sheets. All research under this plan will be for general, formative, and informational research on consumer financial markets and consumers' use of financial products and will not directly provide the basis for specific policymaking at the Bureau.

REQUEST FOR COMMENTS: The Bureau issued a 60-day **Federal Register** notice on March 3, 2015 (80 FR 15194). Comments were solicited and continue to be invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Upon submission of this request to OMB the Bureau issued a 30-day **Federal Register** notice on June 25, 2015 (80 FR 36521). After further consultation with OMB, the Bureau revised this request to include additional 30 day public notices for each study submitted to OMB for review under this information collection plan. Therefore, upon submission of each study submitted to OMB under this information collection plan, the Bureau will publish a notice in the **Federal Register** proving the public 30 days to comment on each study. Comments will be directed to OMB to inform its review of each request made under this information collection plan. All comments will become a matter of public record.

Dated: August 31, 2016.

Darrin A. King,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2016–21389 Filed 9–6–16; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0098]

Agency Information Collection Activities; Comment Request; William D. Ford Federal Direct Loan Program Repayment Plan Selection Form

AGENCY: Department of Education, Federal Student Aid.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before November 7, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0098. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–347, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the

Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: William D. Ford Federal Direct Loan Program Repayment Plan Selection Form.

OMB Control Number: 1845–0014.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 660,000.

Total Estimated Number of Annual Burden Hours: 110,220.

Abstract: The Repayment Plan Request form serves as the means by which Direct Loan borrowers notify the Department of their choice of an initial repayment plan under the Standard, Extended or Graduated options before their loans enter repayment. The form may also be used by borrowers to request a change in the Standard, Extended or Graduated repayment plans options after their loans have entered repayment. If a borrower does not select an initial repayment plan, the borrower is placed on the Standard Repayment Plan in accordance with 34 CFR 685.210(a)(2).

Dated: September 1, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–21401 Filed 9–6–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0081]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Program for the International Assessment of Adult Competencies (PIAAC) 2017 National Supplement

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a reinstatement of a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before October 7, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0081. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–347, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact NCES Information Collections at *NCES.Information.Collections@ed.gov.*

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Program for the International Assessment of Adult Competencies (PIAAC) 2017 National Supplement.

OMB Control Number: 1850–0870.

Type of Review: A reinstatement of a previously approved information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 12,626.

Total Estimated Number of Annual Burden Hours: 3,960.

Abstract: The Program for the International Assessment of Adult Competencies (PIAAC) is a cyclical, large-scale study of adult skills and life experiences focusing on education and employment, designed internationally to assess adults in different countries over a broad range of abilities, from simple reading to complex problem-solving skills, and to collect information on individuals' skill use and background. In the United States, PIAAC is conducted by the National Center for Education Statistics (NCES). PIAAC defines four core competency domains of adult cognitive skills seen as key to facilitating the social and economic participation of adults in advanced economies: Literacy, reading components, numeracy, and problem solving in technology-rich environments. PIAAC also surveys adults on their education background, work history, the skills they use on the job and at home, their civic engagement, and sense of their health and well-being. The results are used to compare participating countries on the skills capacities of their workforce-aged adults and to learn more about relationships between educational background, employment, and other outcomes. PIAAC is coordinated by the Organization for Economic Cooperation and Development (OECD) and developed by participating countries with the support of the OECD. U.S. participated in the PIAAC Main Study data collection in 2012, conducted a national supplement in 2014, and in this submission requests to conduct the PIAAC 2017 National Supplement data collection from February to September 2017 with a nationally representative sample of 3,800 adults ages 16–74, in a new sample of 80 primary sampling units (PSUs).

Dated: August 31, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–21378 Filed 9–6–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Intent To Prepare a Supplemental Environmental Impact Statement for Disposition of Depleted Uranium Oxide Conversion Product Generated From DOE's Inventory of Depleted Uranium Hexafluoride; Correction

AGENCY: U.S. Department of Energy.

ACTION: Notice of intent; correction.

SUMMARY: The Department of the Energy (DOE) published a document in the **Federal Register** (81 FR 58921) on August 26, 2016, announcing a Notice of Intent to Prepare a Supplemental Environmental Impact Statement for Disposition of Depleted Uranium Oxide Conversion Product Generated from DOE's Inventory of Depleted Uranium Hexafluoride. The document contained an error regarding the agency that granted the amendment to the Waste Control Specialists facility near Andrews, Texas, to allow disposal of depleted uranium. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: For further information on DOE's DUF_6 long-term management and disposal program, please contact Ms. Jaffet Ferrer-Torres, National Environmental Policy Act (NEPA) Document Manager, Office of Environmental Management, U.S. Department of Energy, EM–4.22, 1000 Independence Avenue SW., Washington, DC 20585.

Correction

In the **Federal Register** (81 FR 58921) of August 26, 2016, FR Doc. 2016–20501, on page 58922, third column, first paragraph, the first sentence is corrected to read: "In August 2014, the WCS facility near Andrews, Texas, was granted a license amendment by the Texas Commission on Environmental Quality that would allow disposal of large quantities of depleted uranium."

Issued in Washington, DC, on August 31, 2016.

Mark Senderling,

Acting Associate Principal Deputy Assistant Secretary for Regulatory and Policy Affairs.

[FR Doc. 2016–21428 Filed 9–6–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14329–002]

Columbia Basin Hydropower; Notice of Intent To File License Application, Filing of Pre-Application Document, Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 14329–002.

c. *Date Filed:* June 27, 2016.

d. *Submitted By:* Columbia Basin Hydropower.

e. *Name of Project:* Banks Lake Pumped Storage Project.

f. *Location:* On Banks Lake and Franklin D. Roosevelt Lake, in Grant and Douglas Counties, Washington. The project occupies about 65 acres of United States lands administered by Bureau of Reclamation.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. Potential *Applicant Contact:* Tim Culbertson, Columbia Basin Hydropower, P.O. Box 219, Ephrata, WA 98823; (509) 754–2227; email: *TCulbertson@cbhydropower.org.*

i. *FERC Contact:* Karen Sughrue at (202) 502–8556; or email at *karen.sughrue@ferc.gov.*

j. Columbia Basin Hydropower filed its request to use the Traditional Licensing Process on June 27, 2016. Columbia Basin Hydropower provided public notice of its request on August 4, 2016. In a letter dated August 31, 2016, the Director of the Division of Hydropower Licensing approved Columbia Basin Hydropower's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the Washington State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Columbia Basin Hydropower as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

m. Columbia Basin Hydropower filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: August 31, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–21420 Filed 9–6–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–2509–000]

Rutherford Farm, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding Rutherford Farm, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 20, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 31, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–21443 Filed 9–6–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–2511–000]

Stanford University Power LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request For Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding Stanford University Power LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 20, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 31, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–21444 Filed 9–6–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–134–000.
Applicants: Chaves County Solar, LLC, Live Oak Solar, LLC, Marshall Solar, LLC, River Bend Solar, LLC.
Description: Supplement to June 24, 2016 Application for Authorization Under FPA Section 203 of Chaves County Solar, LLC, et al.
Filed Date: 8/31/16.
Accession Number: 20160831–5164.
Comments Due: 5 p.m. ET 9/7/16.

Docket Numbers: EC16–174–000.
Applicants: Dynegy Inc., Elwood Energy LLC, J-POWER USA Generation, L.P.
Description: Joint Application for Authorization Disposition of Jurisdictional Assets and Purchase of Securities Under FPA Sections 203(a)(1) and 203(a)(2) of Elwood Energy LLC, Dynegy Inc. and J-POWER USA Generation, L.P.
Filed Date: 8/30/16.
Accession Number: 20160830–5276.
Comments Due: 5 p.m. ET 9/20/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–2239–005.
Applicants: NextEra Energy Transmission West, LLC.
Description: Compliance filing: NextEra Energy Transmission West, LLC Compliance Filing to be effective 10/20/2015.
Filed Date: 8/30/16.
Accession Number: 20160830–5248.
Comments Due: 5 p.m. ET 9/20/16.

Docket Numbers: ER16–200–004.
Applicants: Duke Energy Indiana, LLC.
Description: Compliance filing: Supplemental Compliance Filing Reactive ER16–200 to be effective 1/1/2016.
Filed Date: 8/30/16.
Accession Number: 20160830–5265.

Comments Due: 5 p.m. ET 9/20/16.

Docket Numbers: ER16–1255–001.
Applicants: Antelope Big Sky Ranch LLC.
Description: Compliance filing: Antelope Big Sky Ranch LLC MBR Tariff to be effective 5/21/2016.
Filed Date: 8/31/16.
Accession Number: 20160831–5158.
Comments Due: 5 p.m. ET 9/21/16.

Docket Numbers: ER16–2307–001.
Applicants: Vista Energy Marketing, L.P.
Description: Tariff Amendment: Amended Vista Energy MBR Filing to be effective 10/1/2016.
Filed Date: 8/31/16.
Accession Number: 20160831–5206.
Comments Due: 5 p.m. ET 9/21/16.

Docket Numbers: ER16–2411–001.
Applicants: Luning Energy Holdings LLC.
Description: Second Supplement to August 12, 2016 Luning Energy Holdings LLC tariff filing.
Filed Date: 8/30/16.
Accession Number: 20160830–5277.
Comments Due: 5 p.m. ET 9/20/16.

Docket Numbers: ER16–2412–001.
Applicants: Luning Energy LLC.
Description: Second Supplement to August 12, 2016 Luning Energy LLC tariff filing.
Filed Date: 8/30/16.
Accession Number: 20160830–5280.
Comments Due: 5 p.m. ET 9/20/16.

Docket Numbers: ER16–2512–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: PSCo-WAPA-Carey SS BA Mtr Install Agrmt to be effective 10/31/2016.
Filed Date: 8/31/16.
Accession Number: 20160831–5063.
Comments Due: 5 p.m. ET 9/21/16.

Docket Numbers: ER16–2513–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3246 Tenaska Power and Montana-Dakota Utilities Att AO to be effective 8/1/2016.
Filed Date: 8/31/16.
Accession Number: 20160831–5065.
Comments Due: 5 p.m. ET 9/21/16.

Docket Numbers: ER16–2514–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: OATT Schedules 4 & 9 Revisions to be effective 12/1/2016.
Filed Date: 8/31/16.
Accession Number: 20160831–5139.
Comments Due: 5 p.m. ET 9/21/16.

Docket Numbers: ER16–2515–000.
Applicants: Black River Hydroelectric, LLC.
Description: § 205(d) Rate Filing: Notice of Succession and Order No. 816 Compliance Filing to be effective 9/1/2016.
Filed Date: 8/31/16.
Accession Number: 20160831–5157.
Comments Due: 5 p.m. ET 9/21/16.

Docket Numbers: ER16–2516–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) Rate Filing: Rate Schedule No. 284—ANPP Delaney Interconnection Agreement to be effective 10/31/2016.
Filed Date: 8/31/16.
Accession Number: 20160831–5174.
Comments Due: 5 p.m. ET 9/21/16.

Docket Numbers: ER16–2517–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Letter Agreement ACES Project to be effective 9/1/2016.
Filed Date: 8/31/16.
Accession Number: 20160831–5201.
Comments Due: 5 p.m. ET 9/21/16.

Docket Numbers: ER16–2518–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: OATT Revisions re: Earlier Queue Submittal to be effective 10/31/2016.
Filed Date: 8/31/16.
Accession Number: 20160831–5256.
Comments Due: 5 p.m. ET 9/21/16.

Docket Numbers: ER16–2519–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2016–08–31—Posting of Day-Ahead Market Ex Post Prices to be effective 9/1/2016.
Filed Date: 8/31/16.
Accession Number: 20160831–5270.
Comments Due: 5 p.m. ET 9/21/16.

Docket Numbers: ER16–2520–000.
Applicants: Grand View PV Solar Two LLC.
Description: Baseline eTariff Filing: Grand View Market-Based Rate Application to be effective 10/3/2016.
Filed Date: 8/31/16.
Accession Number: 20160831–5307.
Comments Due: 5 p.m. ET 9/21/16.

Docket Numbers: ER16–2521–000.
Applicants: Midcontinent Independent System Operator, Inc., Entergy Services, Inc.
Description: § 205(d) Rate Filing: 2016–08–31—SA 2937 Tennessee Valley-NRG-Entergy MS C&P Agreement to be effective 8/24/2016.
Filed Date: 8/31/16.
Accession Number: 20160831–5315.
Comments Due: 5 p.m. ET 9/21/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 31, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–21442 Filed 9–6–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL16–109–000]

Virginia Electric and Power Company v. PJM Interconnection, L.L.C. PJM Settlement, Inc.; Notice of Complaint

Take notice that on August 29, 2016, pursuant to sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824e and 825e (2012), and Rules 206 and 207(a)(5) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 and 207(a)(5) (2016), Dominion Resources Services, Inc. (Dominion) on behalf of Virginia Electric and Power Company (Complainant) filed a formal complaint against PJM Interconnection L.L.C. and PJM Settlement, Inc. (Respondents) alleging that Respondents violated its Open Access Transmission Tariff and Amended and Restated Operating Agreement by denying Dominion's request for a fuel cost adjustment resulting from the need to run Ladysmith Power Station Units 2–5 on back-up fuel oil rather than less expensive natural gas for reliability in real-time, all as more fully explained in the complaint.

Dominion certifies that copies of the complaint were served on the contacts for Respondent listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and

385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on September 19, 2016.

Dated: August 30, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–21417 Filed 9–6–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF15–25–000]

Freeport LNG Development, L.P.; Supplemental Notice of Intent To Prepare an Environmental Assessment for the Planned Freeport LNG Train 4 Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the expanded Freeport LNG Train 4 Project (Project) involving construction and operation of facilities by Freeport LNG Development, L.P. (Freeport LNG) in Brazoria County, Texas. The Commission will use this EA in its decision-making process to determine whether the planned project is in the public interest.

We[1] are issuing this supplemental notice to inform the public of changes to the originally proposed Project. Freeport LNG has modified the planned Project by deleting the non-jurisdictional feed-gas pipeline previously planned to provide gas to the Liquefaction Plant on Quintana Island. To replace the feed gas, Freeport LNG plans to construct a FERC-jurisdictional pipeline extending from the meter station at Stratton Ridge to the Pretreatment Plant on Levee Road/State Road 690 and then to the Liquefaction Plant on Quintana Island. The Pretreatment Plant would be expanded to handle the additional gas processing.

The comment period for the original scoping notice of the Project was from August 19, 2015 to September 18, 2015. This supplemental notice announces the opening of an additional scoping period the Commission will use to gather input from the new landowners potentially affected by changed to the planned Project, and inform interested agencies of the changes

As the modifications would affect new landowners; therefore, the Commission is issuing this supplemental notice to provide these new landowners an opportunity to comment on the Project. You can access detailed mapping of the modifications to the proposed pipeline route on the Commission's Web site (*www.ferc.gov*) using eLibrary. For instructions on connecting to eLibrary, refer to the last page of this notice.

Comments submitted during the original comment period have been made part of the docket and do not need to be resubmitted.

You can make a difference by providing us with your specific comments or concerns about the Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. To ensure that your comments are timely and properly recorded, comments may be submitted in writing as described in the public participation section of this notice. Please note that comments on this supplemental notice should be filed with the Commission by October 3, 2016.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this planned project and encourage them to comment on their areas of concern.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" is available for viewing on the FERC Web site (*www.ferc.gov*). This fact sheet addresses a number of typically asked questions and how to participate in the Commission's proceedings.

Public Participation

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "*eRegister.*" If you are filing a comment on a particular project, please select "Comment on a Filing" as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (PF15–25–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Summary of the Planned Project

Freeport LNG intends to add a fourth liquefaction unit (Train 4), a supply pipeline, and associated infrastructure and utilities to Freeport LNG's natural gas Liquefaction Plant on Quintana Island in Brazoria County, Texas (Appendix 1, Figure 1). The Project would be located adjacent to the facilities authorized and currently under construction for the Phase II

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[1] "We," "us," and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

Modification Project (Docket No. CP12–29–000) and Liquefaction Project (Docket No. CP12–509–000), which comprises three liquefaction trains and related facilities. The planned Train 4 liquefaction unit would be within the existing Freeport LNG site boundary. The modified and extended pipeline route (Apendix 1, Figure 3) would connect the existing Stratton Ridge meter station, the proposed pretreatment unit within the existing Pretreatment Plant, and the existing Liquefaction Plant.

Freeport LNG would expand the Pretreatment Plant that was approved under Docket CP12–509 (Appendix 1, Figure 2).

Freeport LNG indicates that the Train 4 Project would provide additional liquefaction capacity of approximately 5.1 million metric tonnes per annum (''mtpa'') of LNG for export. The additional liquefaction capacity provided by Train 4 would equate to a natural gas throughput capacity of approximately 0.74 billion cubic feet per day. This would enable Freeport LNG to respond favorably and proactively to short- and longer-term fluctuations in domestic and global gas markets.

The Freeport LNG Train 4 Project would consist of the following major components:

Quintana Island Terminal

- A propane pre-cooled mixed refrigerant LNG unit
- An electrical high-voltage substation

Pretreatment Plant

- A natural gas pretreatment unit
- Tank storage for amine solution, aqueous ammonia, heating medium, slop, and demineralized water
- Inlet and outlet compression
- Emergency electric generator
- An electric substation

Pipeline Facilities

- An 11.5-mile-long, 42-inch-diameter pipeline with a maximum allowable operating pressure of 1,440 pounds per square inch between the existing Stratton Ridge meter station, Pretreatment Plant, and the Quintana Island Terminal
- Pig launcher and receiver
- Mainline valves
- Stratton Ridge Meter Station

The general locations of project facilities are shown in Appendix 1.[2]

Land Requirements for Construction

The operational and construction footprint for the Train 4 Project would be primarily within Freeport LNG's previously disturbed areas authorized as part of the Liquefaction and Phase II Modification Projects (Docket Nos. CP12–29–000 and CP12–509–000) on Quintana Island in Brazoria County, Texas.

The Train 4 Project would affect about 558 acres during construction and the permanent operational footprint would be about 235 acres. Following construction, temporary construction areas would be restored and revert to former uses in areas other than the Quintana Island Terminal and Pretreatment Plant which have been disturbed by prior and present construction. These areas would be permanently maintained for industrial use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers an authorization to export natural gas under Section 3 of the Natural Gas Act. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

- geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;
- endangered and threatened species;
- socioeconomics;
- visual impacts;
- air quality and noise;
- public safety; and
- cumulative impacts.

We will also evaluate possible alternatives to the planned project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the FERC receives an application. As part of our pre-filing review, we have begun to contact some federal and state agencies to discuss their involvement in the scoping process and the preparation of the EA.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. If we publish and distribute the EA to the public there will be an allotted comment period. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to this project to formally cooperate with us in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice. Currently, the U.S. Department of Transportation, and the U.S. Department of Energy, Office of Fossil Energy have expressed their intention to participate as cooperating agencies in the preparation of the EA to satisfy their NEPA responsibilities related to this project.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO(s) as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

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[2] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the planned facilities and the environmental information provided by Freeport LNG. This preliminary list of issues may change based on your comments and our analysis.

- geology and soils
- water resources, fisheries, and wetlands
- visual impacts
- noise and air emissions
- traffic
- cumulative impacts

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

If we publish and distribute the EA, copies of the EA will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (Appendix 2).

Becoming an Intervenor

Once Freeport LNG files its application with the Commission, you may want to become an "intervenor," which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Motions to intervene are more fully described at: *http://www.ferc.gov/resources/guides/how-to/intervene.asp.*

Instructions for becoming an intervenor are in the "Document-less Intervention Guide" under the "e-filing" link on the Commission's Web site. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the project.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* PF15–25). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: August 31, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–21421 Filed 9–6–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR16–23–000]

Delta Air Lines, Inc., Atlas Air, Inc., Polar Air Cargo Worldwide, Inc. v. Enterprise TE Products Pipeline Company LLC; Notice of Complaint

Take notice that on August 30, 2016, pursuant to Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, section 343.2 of the Commission's Rules Applicable to Oil Pipeline Proceedings, 18 CFR 343.2 (2016), and sections 1, 8, 9, 13(1), 15, and 16(1) of the Interstate Commerce Act (ICA), 49 U.S.C. app. §§ 1, 8, 9, 13(1), 15, & 16(1) (1988), Delta Air Lines, Inc., Atlas Air, Inc., and Polar Air Cargo Worldwide, Inc. (Complainants) filed a formal complaint against Enterprise TE Products Pipeline Company LLC, (Enterprise TEPPCO or Respondent) challenging the lawfulness of the existing jet fuel rates and charges for services on the interstate oil pipeline of Enterprise TEPPCO running from Lima, Ohio to Cincinnati/Northern Kentucky International Airport, as more fully explained in the complaint.

Complainants certify that copies of the complaint were served on the contacts for Enterprise TEPPCO as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically

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historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on September 19, 2016.

Dated: August 31, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–21419 Filed 9–6–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2249–006.
Applicants: Portland General Electric Company.
Description: Notice of Change in Status of Portland General Electric Company.
Filed Date: 8/29/16.
Accession Number: 20160829–5116.
Comments Due: 5 p.m. ET 9/19/16.

Docket Numbers: ER15–1706–003.
Applicants: Newark Energy Center, LLC.
Description: Compliance filing: Settlement Compliance Filing to be effective 7/1/2015.
Filed Date: 8/29/16.
Accession Number: 20160829–5151.
Comments Due: 5 p.m. ET 9/19/16.

Docket Numbers: ER15–2254–002.
Applicants: Scrubgrass Generating Company, L.P.
Description: Compliance filing: Settlement Compliance Filing to be effective 9/1/2015.
Filed Date: 8/29/16.
Accession Number: 20160829–5195.
Comments Due: 5 p.m. ET 9/19/16.

Docket Numbers: ER16–1707–003.
Applicants: Upper Peninsula Power Company.
Description: Tariff Amendment: 3rd Amended Project Services Agreement to be effective 9/3/2016.
Filed Date: 8/29/16.
Accession Number: 20160829–5200.
Comments Due: 5 p.m. ET 9/19/16.

Docket Numbers: ER16–2226–000.
Applicants: McHenry Battery Storage, LLC.
Description: Supplement to July 18, 2016 McHenry Battery Storage, LLC tariff filing [substitute Attachment D] under ER16–2226.
Filed Date: 8/4/16.
Accession Number: 20160804–5086.
Comments Due: 5 p.m. ET 9/12/16.

Docket Numbers: ER16–2293–001.
Applicants: Drift Sand Wind Project, LLC.
Description: Tariff Amendment: MBR Tariff to be effective 9/23/2016.
Filed Date: 8/29/16.
Accession Number: 20160829–5138.
Comments Due: 5 p.m. ET 9/19/16.

Docket Numbers: ER16–2496–000.
Applicants: CXA Sundevil I, Inc.
Description: Baseline eTariff Filing: Application for Market Based Rate to be effective 9/30/2016.
Filed Date: 8/29/16.
Accession Number: 20160829–5000.
Comments Due: 5 p.m. ET 9/19/16.

Docket Numbers: ER16–2497–000.
Applicants: CXA Sundevil II, Inc.
Description: Baseline eTariff Filing: Application for Market Based Rate to be effective 9/30/2016.
Filed Date: 8/26/16.
Accession Number: 20160829–5001.
Comments Due: 5 p.m. ET 9/16/16.

Docket Numbers: ER16–2498–000.
Applicants: Portland General Electric Company.
Description: § 205(d) Rate Filing: PGE11 MBR Revisions Sec 6 and 7 update to be effective 8/29/2016.
Filed Date: 8/29/16.
Accession Number: 20160829–5002.
Comments Due: 5 p.m. ET 9/19/16.

Docket Numbers: ER16–2499–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 2698 Exelon Generation Market Participant Agr Cancellation to be effective 8/1/2016.
Filed Date: 8/29/16.
Accession Number: 20160829–5139.
Comments Due: 5 p.m. ET 9/19/16.

Docket Numbers: ER16–2500–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to First Revised WMPA, SA No. 2933, Queue No. W2–076 to be effective 5/23/2014.
Filed Date: 8/29/16.
Accession Number: 20160829–5141.
Comments Due: 5 p.m. ET 9/19/16.

Docket Numbers: ER16–2501–000.
Applicants: Nicolis, LLC.
Description: Baseline eTariff Filing: Application for Market Based Rate to be effective 8/30/2016.
Filed Date: 8/29/16.
Accession Number: 20160829–5158.
Comments Due: 5 p.m. ET 9/19/16.

Docket Numbers: ER16–2502–000.
Applicants: Tropico, LLC.
Description: Baseline eTariff Filing: Application for Market Based Rate to be effective 8/30/2016.
Filed Date: 8/29/16.
Accession Number: 20160829–5159.
Comments Due: 5 p.m. ET 9/19/16.

Docket Numbers: ER16–2503–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: Att R–PSCo Comp to ER16–1088 Filing to be effective 4/16/2016.
Filed Date: 8/29/16.
Accession Number: 20160829–5161.
Comments Due: 5 p.m. ET 9/19/16.

Docket Numbers: ER16–2504–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: PSCo Wind Integ Compl to ER14–1969–006 to be effective 4/16/2016.
Filed Date: 8/29/16.
Accession Number: 20160829–5162.
Comments Due: 5 p.m. ET 9/19/16.

Docket Numbers: ER16–2505–000.
Applicants: Duke Energy Indiana, LLC.
Description: § 205(d) Rate Filing: Amended and Restated Power Coordination Agreement RS No. 267 to be effective 10/28/2016.
Filed Date: 8/29/16.
Accession Number: 20160829–5216.
Comments Due: 5 p.m. ET 9/19/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 29, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–21527 Filed 9–6–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Number: PR16–69–000.

Applicants: Pacific Gas and Electric Company.

Description: Tariff filing per 284.123(b)(1) + (g): Revisions to Appendix A of Statement of Operating Conditions to be effective 8/1/2016; Filing Type: 1300.

Filed Date: 8/29/2016.

Accession Number: 201608295318, *http://elibrary.ferc.gov/idmws/doc_info.asp?accession_num=20160415-5222.*

Comments Due: 5 p.m. ET 9/19/16.

284.123(g) Protests Due: 5 p.m. ET 10/28/16.

Docket Numbers: RP16–1195–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Neg Rate—BBPC Release to Macquarie Energy 792012 to be effective 9/1/2016.

Filed Date: 8/30/16.

Accession Number: 20160830–5113.

Comments Due: 5 p.m. ET 9/12/16.

Docket Numbers: RP16–1196–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Neg Rates—Mpower Energy Releases to Enhanced Energy to be effective 9/1/2016.

Filed Date: 8/30/16.

Accession Number: 20160830–5136.

Comments Due: 5 p.m. ET 9/12/16.

Docket Numbers: RP16–1197–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Neg Rates—Ratio Energy contract 792017 to be effective 9/1/2016.

Filed Date: 8/30/16.

Accession Number: 20160830–5203.

Comments Due: 5 p.m. ET 9/12/16.

Docket Numbers: RP16–1198–000.

Applicants: Ruby Pipeline, L.L.C.

Description: § 4(d) Rate Filing: EPC and Fuel Update Filing to be effective 10/1/2016.

Filed Date: 8/30/16.

Accession Number: 20160830–5239.

Comments Due: 5 p.m. ET 9/12/16.

Docket Numbers: RP16–1199–000.

Applicants: Transcontinental Gas Pipe Line Company.

Description: § 4(d) Rate Filing: Negotiated Rates—Cherokee AGL—Replacement Shippers—Sep 2016 to be effective 9/1/2016

Filed Date: 8/31/16.

Accession Number: 20160831–5000.

Comments Due: 5 p.m. ET 9/12/16.

Docket Numbers: RP16–1200–000.

Applicants: Kern River Gas Transmission Company.

Description: § 4(d) Rate Filing: 2016 Nonconforming October 2016 P2 Contract to be effective 10/1/2016.

Filed Date: 8/31/16.

Accession Number: 20160831–5010.

Comments Due: 5 p.m. ET 9/12/16.

Docket Numbers: RP16–1201–000.

Applicants: Gulf South Pipeline Company, LP.

Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Atlanta 8438 to various eff 9–1–2016) to be effective 9/1/2016.

Filed Date: 8/31/16.

Accession Number: 20160831–5108.

Comments Due: 5 p.m. ET 9/12/16.

Docket Numbers: RP16–1202–000.

Applicants: Gulf South Pipeline Company, LP.

Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (Encana 37663 to ConocoPh 46987, Texla 46986) to be effective 9/1/2016.

Filed Date: 8/31/16.

Accession Number: 20160831–5109.

Comments Due: 5 p.m. ET 9/12/16.

Docket Numbers: RP16–1203–000.

Applicants: Bear Creek Storage Company, L.L.C.

Description: Compliance filing Cost and Revenue Study.

Filed Date: 8/31/16.

Accession Number: 20160831–5110.

Comments Due: 5 p.m. ET 9/12/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 31, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–21555 Filed 9–6–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Privacy Act of 1974: Notice of Altered Systems of Records

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of altered systems of records.

SUMMARY: The Federal Energy Regulatory Commission (the Commission), under the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, is publishing a description of an altered system of records (FERC–46).

ADDRESSES: Comments should be directed to the following address: Office of the General Counsel, General and Administrative Law Division, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

DATES: The proposed revised system will become effective October 17, 2016 unless further notice is given. The Commission will publish a new notice if the effective date is delayed to review comments or if changes are made based on comments received. To be assured of consideration, comments should be received on or before October 7, 2016.

FOR FURTHER INFORMATION CONTACT: Kathryn Allen, Office of the General Counsel, General and Administrative Law Division, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8585.

SUPPLEMENTARY INFORMATION:

I. Report on the Altered Systems

A. Background

The Privacy Act of 1974, 5 U.S.C. 552a, requires that each agency publish a notice of the existence and character of each new or altered "system of records." 5 U.S.C. 552a(a)(5). This Notice identifies and describes the Commission's altered systems of records. A copy of this report has been distributed to the Speaker of the House of Representatives and the President of the Senate as the Act requires.

The Commission has adopted an altered system of records under the Privacy Act of 1974. The notice includes for this systems of records the name; location; categories of individuals on whom the records are maintained; categories of records in the system; authority for maintenance of the system; each routine use; the policies and practices governing storage, retrievability, access controls, retention and disposal; the title and business address of the agency official responsible for the system of records; procedures for notification, access and contesting the record; and the source for the records in the system. 5 U.S.C. 552(a)(4).

B. New or Altered System of Records

FERC–46 Commission Freedom of Information Act and Privacy Act Request Files *http://www.ferc.gov/privacy/sorn-maps.pdfhttp://www.ferc.gov/privacy/sorn-fpps.pdf.*

FERC–46 SYSTEM NAME:

Commission Freedom of Information Act and Privacy Act Request Files.

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

Federal Energy Regulatory Commission, Office of External Affairs, 888 First Street NE., Washington, DC 20426

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals requesting records from FERC under the provisions of the Freedom of Information Act (FOIA) and the Privacy Act (PA) of 1974.

CATEGORIES OF RECORDS IN THE SYSTEM:

Requester's name and address, request number, description of request, billing information, tracking information, and all correspondence with the requester.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, 552a; Executive Order 12009.

PURPOSE(S):

To record, track and maintain a complete record of events and ensure proper document control of time sensitive responses to FOIA and PA inquiries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To maintain a tracking system to expedite responses within the statutory time limits for the FOIA requests; to contact FOIA requesters; to prepare an annual report to the U.S. Department of Justice for submission to Congress each fiscal year under section 552(e) of the Freedom of Information Act; to prepare periodic activity reports for the Director, Office of External Affairs, to serve as a point of reference for all events and documents pertinent to the request in case of litigation; and to provide the National Archives and Records Administration, Office of Government Information Services (OGIS) to the extent necessary with information to fulfill its responsibilities in 5 U.S.C. 552(h), to review administrative agency policies, procedures and compliance with FOIA and to facilitate OGIS offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic and paper format. Electronic records are stored in computerized databases and/or on computer disc. Paper records and records on computer disc are stored in locked file rooms and/or file cabinets.

RETRIEVABILITY:

The records are retrieved by the names of the individual requester, affiliation (where applicable), and subject matter.

SAFEGUARDS:

Records are maintained in lockable metal file cabinets in a lockable room with a key distributed to those whose official duties require access. Computer data is secured by password. The building is guarded and monitored by security personnel, cameras, ID checks, and other physical security measures.

RETENTION AND DISPOSAL:

The retention period is two years after completion date if the information is released or six years after completion date if any or all information is withheld from the requester. Computer records are deleted and paper records are shredded and destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

FOIA Liaison, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

NOTIFICATION PROCEDURE:

Requests from individuals to determine if a system of records contains information about them should be directed to the System Manager.

RECORD ACCESS PROCEDURES:

Requests for access to records should be directed to the Director, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

CONTESTING RECORD PROCEDURES:

Same as notification procedure above.

RECORD SOURCE CATEGORIES:

The subject individual; system manager; FERC staff, and the Director, Office of External Affairs.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: August 30, 2016

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–21418 Filed 9–6–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9951–89–OARM]

Good Neighbor Environmental Board; Notification of Public Advisory Committee Teleconference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public advisory committee teleconference.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Good Neighbor Environmental Board (Board) will hold a public teleconference on October 14, 2016 from 12:00 p.m.–4:00 p.m. Eastern Daylight Time. For further information regarding the teleconference and background materials, please contact Mark Joyce at the number and email provided below.

SUPPLEMENTARY INFORMATION:

Background: The Good Neighbor Environmental Board is a federal advisory committee chartered under the Federal Advisory Committee Act, Public Law 92–463. By statute, the Board is required to submit an annual report to the President on environmental and infrastructure issues along the U.S. border with Mexico.

Purpose of Meeting: The purpose of this teleconference is to discuss and approve the Board's Seventeenth Report to the President, which focuses on climate change along the U.S.-Mexico border.

General Information: The agenda and teleconference materials, as well as general information about the Board, can be found at *http://www2.epa.gov/*

faca/gneb. If you wish to make oral comments or submit written comments to the Board, please contact Mark Joyce at least five days prior to the teleconference.

Meeting Access: For information on access or services for individuals with disabilities, please contact Mark Joyce at (202) 564–2130 or email at *joyce.mark@epa.gov.* To request accommodation of a disability, please contact Mark Joyce at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: August 25, 2016.

Mark Joyce,

Acting Designated Federal Officer.

[FR Doc. 2016–21462 Filed 9–6–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination; 10002 Miami Valley Bank, Lakeview, Ohio

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10002 Miami Valley Bank, Lakeview, Ohio (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of Miami Valley Bank (Receivership Estate); the Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective September 1, 2016, the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: September 1, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–21466 Filed 9–6–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination; 10346 San Luis Trust Bank, FSB; San Luis Obispo, California

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10346 San Luis Trust Bank, FSB, San Luis Obispo, CA (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of San Luis Trust Bank, FSB (Receivership Estate); the Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective September 1, 2016, the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Date: August 31, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–21354 Filed 9–6–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination, 10046 TeamBank, N.A., Paola, Kansas

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10046 TeamBank, N.A., Paola, Kansas (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of TeamBank, N.A (Receivership Estate); the Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective September 1, 2016, the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: September 1, 2016.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–21465 Filed 9–6–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS16–08]

Appraisal Subcommittee; Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of meeting.

Description: In accordance with Section 1104(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in open session for its regular meeting:

Location: Federal Reserve Board—International Square location, 1850 K Street NW., Washington, DC 20006.

Date: September 14, 2016.

Time: 10:00 a.m.

Status: Open.

Reports

Chairman
Executive Director
Delegated State Compliance Reviews
Financial Report

Action and Discussion Items

July 13, 2016 Open Session Minutes
Appraisal Foundation FY17 Grant Proposal
ASC FY17 Budget Proposal

How To Attend and Observe an ASC Meeting

If you plan to attend the ASC Meeting in person, we ask that you send an email to *meetings@asc.gov.* You may register until close of business four business days before the meeting date. You will be contacted by the Federal Reserve Law Enforcement Unit on security requirements. You will also be asked to provide a valid government-issued ID before being admitted to the Meeting. The meeting space is intended to accommodate public attendees. However, if the space will not accommodate all requests, the ASC may refuse attendance on that reasonable basis. The use of any video or audio tape recording device, photographing device, or any other electronic or mechanical device designed for similar purposes is prohibited at ASC meetings.

Dated: August 31, 2016.

James R. Park,

Executive Director.

[FR Doc. 2016–21367 Filed 9–6–16; 8:45 am]

BILLING CODE 6700–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting for the aforementioned committee:

Time and Date: 8:30 a.m.–2:30 p.m., EDT, September 27, 2016.

Place: Patriots Plaza I, 395 E Street SW., Room 9000, Washington, DC 20201. The meeting is also available via webcast.

Status: This meeting is open to the public, limited only by the space available. The meeting room accommodates approximately 33 people. The public is welcome to participate during the public comment period, 12:30 p.m.–12:45 p.m. EDT, September 27, 2016.

Please note that the public comment period ends at the time indicated above or following the last call for comments, whichever is earlier. Members of the public who want to comment must sign up by providing their name by mail, email, or telephone, at the addresses provided below by September 23, 2016. Each commenter will be provided up to five minutes for comment. A limited number of time slots are available and will be assigned on a first come-first served basis. Written comments will also be accepted from those unable to attend the public session via an on-line form at the following Web site: *http://www.cdc.gov/niosh/bsc/contact.html.* The meeting is also open to the public via webcast. If you wish to attend in person or by webcast, please see the NIOSH Web site to register (*http://www.cdc.gov/niosh/bsc/*) or call (404–498–2539) at least five business days in advance of the meeting. Teleconference is available toll-free; please dial (888) 397–9578, Participant Pass Code 63257516. Adobe Connect webcast will be available at *https://odniosh.adobeconnect.com/nioshbsc/* for participants wanting to connect remotely.

Purpose: The Secretary, the Assistant Secretary for Health, and by delegation the Director, Centers for Disease Control and Prevention, are authorized under Sections 301 and 308 of the Public Health Service Act to conduct directly or by grants or contracts, research, experiments, and demonstrations relating to occupational safety and health and to mine health. The Board of Scientific Counselors provides guidance to the Director, National Institute for Occupational Safety and Health on research and prevention programs. Specifically, the Board provides guidance on the Institute's research activities related to developing and evaluating hypotheses, systematically documenting findings and disseminating results. The Board evaluates the degree to which the activities of the National Institute for Occupational Safety and Health: (1) conform to appropriate scientific standards, (2) address current, relevant needs, and (3) produce intended results.

Matters for Discussion: NIOSH Director's update; Chronic Kidney Disease and Pesticide Exposure; NIOSH Oil and Gas Sector Program; Engineering Controls for Additive (3D) Manufacturing, and Engineering Controls and Nanomaterials.

Agenda items are subject to change as priorities dictate.

An agenda is also posted on the NIOSH Web site (*http://www.cdc.gov/niosh/bsc/*). Members of the public who wish to address the NIOSH BSC are requested to contact the Executive Secretary for scheduling purposes (see contact information below). Alternatively, written comments to the BSC may be submitted via an on-line form at the following Web site: *http://www.cdc.gov/niosh/bsc/contact.html.*

Contact Person for More Information: Paul J. Middendorf, Ph.D., Executive Secretary, BSC, NIOSH, CDC, 1600 Clifton Road NE., MS–E20, Atlanta, GA 30329–4018, telephone (404) 498–2500, fax (404) 498–2526.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker, MPH, DLP,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 2016–21399 Filed 9–6–16; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, Office of Infectious Diseases (BSC, OID)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Times and Dates: 8:30 a.m.–5:00 p.m., EDT, September 27, 2016; 8:00 a.m.–12:00 p.m., EDT, September 28, 2016.

Place: CDC, Global Communications Center, 1600 Clifton Road NE., Building 19, Auditorium B3, Atlanta, Georgia 30333.

Status: The meeting is open to the public, limited only by the space available.

Purpose: The BSC, OID, provides advice and guidance to the Secretary, Department of Health and Human Services; the Director, CDC; the Director, OID; and the Directors of the National Center for Immunization and Respiratory Diseases, the National Center for Emerging and Zoonotic Infectious Diseases, and the National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, CDC, in the following areas: strategies, goals, and priorities for programs; research within the national centers; and overall strategic direction and focus of OID and the national centers.

Matters for Discussion: The meeting will include updates from CDC's infectious disease national centers; a report from the Board's Food Safety Modernization Act Surveillance Working Group; and focused discussions on several program priorities, including viral hepatitis, Zika, and antimicrobial resistance.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Robin Moseley, M.A.T., Designated Federal Officer, OID, CDC, 1600 Clifton Road NE., Mailstop D10, Atlanta, Georgia 30333, Telephone: (404) 639–4461.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker, MPH, DLP,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 2016–21400 Filed 9–6–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0514]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Requests for Clinical Laboratory Improvement Amendments Categorization

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by October 7, 2016.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0607. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Requests for Clinical Laboratory Improvement Amendments of 1988 Categorization—42 CFR 493.17—OMB Control Number 0910–0607—Extension

A guidance document entitled "Guidance for Administrative Procedures for CLIA Categorization" was released on May 7, 2008. The document describes procedures FDA uses to assign the complexity category to a device. Typically, FDA assigns complexity categorizations to devices at the time of clearance or approval of the device. In this way, no additional burden is incurred by the manufacturer because the labeling (including operating instructions) is included in the premarket notification (510(k)) or premarket approval application (PMA). In some cases, however, a manufacturer may request Clinical Laboratory Improvement Amendments of 1998 (CLIA) categorization even if FDA is not simultaneously reviewing a 510(k) or PMA. One example is when a manufacturer requests that FDA assign CLIA categorization to a previously cleared device that has changed names since the original CLIA categorization. Another example is when a device is exempt from premarket review. In such cases, the guidance recommends that manufacturers provide FDA with a copy of the package insert for the device and a cover letter indicating why the manufacturer is requesting a categorization (*e.g.* name change, exempt from 510(k) review). The guidance recommends that in the correspondence to FDA the manufacturer should identify the product code and classification as well as reference to the original 510(k) when this is available.

In the **Federal Register** of April 27, 2016 (81 FR 24820), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours	Total operating and maintenance costs
Request for CLIA Categorization	60	15	900	1	900	$46,800

[1] There are no capital costs associated with this collection of information.

The number of respondents is approximately 60. On average, each respondent will request categorizations (independent of a 510(k) or PMA) 15 times per year. The cost, not including personnel, is estimated at $52 per hour (52 × 900), totaling $46,800. This includes the cost of copying and mailing copies of package inserts and a cover letter, which includes a statement of the reason for the request and reference to the original 510(k) numbers, including regulation numbers and product codes. The burden hours are based on FDA familiarity with the types of documentation typically included in a sponsor's categorization requests, and costs for basic office supplies (*e.g.,* paper).

Dated: August 31, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–21352 Filed 9–6–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0731]

Agency Information Collection Activities; Proposed Collection; Comment Request; Human Cells, Tissues, and Cellular and Tissue-Based Products: Establishment Registration and Listing; Eligibility Determination for Donors; and Current Good Tissue Practice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements for FDA regulations related to human cells, tissues, and cellular and tissue-based products (HCT/Ps) involving establishment registration and listing using Form FDA 3356; eligibility determination for donors; and current good tissue practice (CGTP).

DATES: Submit either written or electronic comments on the collection of information by November 7, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2013–N–0731 for "Agency Information Collection Activities; Proposed Collection; Comment Request; Human Cells, Tissues, and Cellular and Tissue-Based Products: Establishment Registration and Listing; Eligibility Determination for Donors; and Current Good Tissue Practice." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North, 11601 Landsdown St., 10A–12M, North Bethesda, MD 20852, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Human Cells, Tissues, and Cellular and Tissue-Based Products: Establishment Registration and Listing; Eligibility Determination for Donors; and Current Good Tissue Practice—OMB Control Number 0910–0543—Extension

Under section 361 of the Public Health Service Act (the PHS Act) (42 U.S.C. 264), FDA may issue and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases between the States or possessions or from foreign countries into the States. As derivatives of the human body, all HCT/Ps pose some risk of carrying pathogens that could potentially infect recipients or handlers. FDA has issued regulations related to HCT/Ps involving establishment registration and listing using Form FDA 3356, eligibility determination for donors, and CGTP.

Establishment Registration and Listing; Form FDA 3356

The regulations in part 1271 (21 CFR part 1271) require domestic and foreign establishments that recover, process, store, label, package, or distribute an HCT/P described in § 1271.10(a), or that perform screening or testing of the cell or tissue donor to register with FDA (§ 1271.10(b)(1)) and submit a list of each HCT/P manufactured (§ 1271.10(b)(2)). Section 1271.21(a) requires an establishment to follow certain procedures for initial registration and listing of HCT/Ps, and § 1271.25(a) and (b) identifies the required initial registration and HCT/P listing information. Section 1271.21(b), in brief, requires an annual update of the establishment registration. Section 1271.21(c)(ii) requires establishments to submit HCT/P listing updates if a change as described in § 1271.25(c) has occurred. Section 1271.25(c) identifies the required HCT/P listing update information. Section 1271.26 requires establishments to submit an amendment if ownership or location of the establishment changes. FDA requires the use of a registration and listing form, Form FDA 3356: Establishment Registration and Listing for Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps), to submit the required information (§§ 1271.10, 1271.21, 1271.25, and 1271.26). To further facilitate the ease and speed of submissions, electronic submission is accepted at *http://www.fda.gov/BiologicsBloodVaccines/GuidanceCompliance RegulatoryInformation/EstablishmentRegistration/TissueEstablishmentRegistration/default.htm.*

Form FDA 3356 is being revised as follows: (1) Adding import contact information including an email address and phone number; (2) deleting columns related to HCT/Ps subject to registration and listing under 21 CFR part 207 or 807; and (3) revising the instructions accordingly. The estimated burden is not affected by these changes.

Eligibility Determination for Donors

In brief, FDA requires certain HCT/P establishments described in § 1271.1(b) to determine donor eligibility based on donor screening and testing for relevant communicable disease agents and diseases except as provided under § 1271.90. The documented determination of a donor's eligibility is made by a responsible person as defined in § 1271.3(t) and is based on the results of required donor screening, which includes a donor medical history interview (defined in § 1271.3(n)), and testing (§ 1271.50(a)). Certain records must accompany an HCT/P once the donor-eligibility determination has been made (§ 1271.55(a)). This requirement applies both to an HCT/P from a donor who is determined to be eligible as well as to an HCT/P from a donor who is determined to be ineligible or where the donor-eligibility determination is not complete if there is a documented urgent medical need, as defined in § 1271.3(u) (§ 1271.60). Once the donor-eligibility determination has been made, the HCT/P must be accompanied by a summary of records used to make the donor eligibility determination (§ 1271.55(b)), and a statement whether, based on the results of the screening and testing of the donor, the donor is determined to be eligible or ineligible (§ 1271.55(a)(2)). Records used in determining the eligibility of a donor, *i.e.,* results and interpretations of testing for relevant communicable disease agents, the donor-eligibility determination, the name and address of the testing laboratory or laboratories, and the name of the responsible person (defined in § 1271.3(t)) who made the donor-eligibility determination and the date of the determination, must be maintained (§ 1271.55(d)(1)). If any information on the donor is not in English, the original record must be maintained and translated to English, and accompanied by a statement of authenticity by the translator (§ 1271.55(d)(2)). HCT/P establishments must retain the records pertaining to a particular HCT/P at least 10 years after the date of its administration, or, if the date of administration is not known, then at least 10 years after the date of the HCT/P's distribution, disposition, or expiration, whichever is latest (§ 1271.55(d)(4)).

When a product is shipped in quarantine, as defined in § 1271.3(q), before completion of screening and testing, the HCT/P must be accompanied by records identifying the donor stating that the donor-eligibility determination has not been completed and stating that the product must not be implanted, transplanted, infused, or transferred until completion of the donor-eligibility determination, except in cases of urgent medical need, as defined in § 1271.3(u) (§ 1271.60(c)). When a HCT/P is used in cases of documented urgent medical need, the results of any completed donor screening and testing, and a list of any required screening and testing that has not yet been completed also must accompany the HCT/P (§ 1271.60(d)(2)). When a HCT/P is used in cases of urgent medical need or from a donor who has been determined to be ineligible (as permitted under § 1271.65), documentation by the HCT/P establishment is required showing that the recipient's physician received notification that the testing and screening were not complete (in cases of urgent medical need), and upon the completion of the donor-eligibility determination, of the results of the determination (§§ 1271.60(d)(3) and (d)(4), and 1271.65(b)(3)).

An HCT/P establishment is also required to establish and maintain procedures for all steps that are performed in determining eligibility (§ 1271.47(a)), including the use of a product from a donor of viable, leukocyte-rich cells or tissue testing reactive for cytomegalovirus (§ 1271.85(b)(2)). The HCT/P establishment must record and justify any departure from a procedure relevant to preventing risks of communicable disease transmission at the time of its occurrence (§ 1271.47(d)).

Current Good Tissue Practice (CGTP)

FDA requires HCT/P establishments to follow CGTP (§ 1271.1(b)). Section 1271.155(a) permits the submission of a request for FDA approval of an exemption from or an alternative to any requirement in subpart C or D of part 1271. Section 1271.290(c) requires establishments to affix a distinct identification code to each HCT/P that they manufacture that relates the HCT/P to the donor and to all records pertaining to the HCT/P. Whenever an establishment distributes an HCT/P to a consignee, § 1271.290(f) requires the establishment to inform the consignee, in writing, of the product tracking requirements and the methods the establishment uses to fulfill these requirements. Non-reproductive HCT/P establishments described in § 1271.10 are required under § 1271.350(a)(1) and (a)(3) to investigate and report to FDA adverse reactions (defined in § 1271.3(y)) using Form FDA 3500A (§ 1271.350(a)(2)). Form FDA 3500A is approved under OMB control number 0910–0291. Section 1271.370(b) and (c) requires establishments to include specific information either on the HCT/P label or with the HCT/P.

The standard operating procedures (SOP) provisions under part 1271 include the following: (1) § 1271.160(b)(2) (receiving, investigation, evaluating, and documenting information relating to core CGTP requirements, including complaints, and for sharing information with consignees and other establishments); (2) § 1271.180(a) (to meet core CGTP requirements for all steps performed in the manufacture of HCT/Ps); (3) § 1271.190(d)(1) (facility cleaning and sanitization); (4) § 1271.200(b) (cleaning, sanitizing, and maintenance of equipment); (5) § 1271.200(c) (calibration of equipment); (6) § 1271.230(a) and (c) (validation of a process and review and evaluation of changes to a validated process); (7) § 1271.250(a) (controls for labeling HCT/Ps); (8) § 1271.265(e) (receipt, predistribution shipment, availability for distribution, and packaging and shipping of HCT/Ps); (9) § 1271.265(f) (suitable for return to inventory); (10) § 1271.270(b) (records management system); (11) § 1271.290(b)(1) (system of HCT/P tracking); and (12) § 1271.320(a) (review, evaluation, and documentation of complaints as defined in § 1271.3(aa)).

Section 1271.155(f) requires an establishment operating under the terms of an exemption or alternative to maintain documentation of FDA's grant of the exemption or approval and the date on which it began operating under the terms of the exemption or alternative. Section 1271.160(b)(3) requires the quality program of an establishment that performs any step in the manufacture of HCT/Ps to document corrective actions relating to core CGTP requirements. Section 1271.160(b)(6) requires documentation of HCT/P deviations. Section 1271.160(d) requires, in brief, documentation of validation of computer software if the establishment relies upon it to comply with core CGTP requirements. Section 1271.190(d)(2) requires documentation of all cleaning and sanitation activities performed to prevent contamination of HCT/Ps. Section 1271.195(d) requires documentation of environmental control and monitoring activities. Section 1271.200(e) requires documentation of all equipment maintenance, cleaning, sanitizing, calibration, and other activities. Section 1271.210(d) requires, in brief, documentation of the receipt, verification, and use of each supply or reagent. Section 1271.230(a) requires documentation of validation activities and results when the results of processing described in § 1271.220 cannot be fully verified by subsequent inspection and tests. Section 1271.230(c) requires that when changes to a validated process subject to § 1271.230(a) occur, documentation of the review and evaluation of the process and revalidation, if necessary, must occur. Section 1271.260(d) and (e) requires documentation of any corrective action taken when proper storage conditions are not met and documentation of the storage temperature for HCT/Ps. Section 1271.265(c)(1) requires documentation that all release criteria have been met before distribution of an HCT/P. Section 1271.265(c)(3) requires documentation of any departure from a procedure relevant to preventing risks of communicable disease transmission at the time of occurrence. Section 1271.265(e) requires documentation of the activities in paragraphs (a) through (d) of this section, which must include identification of the HCT/P and the establishment that supplied the HCT/P, activities performed and the results of each activity, date(s) of activity, quantity of HCT/P subject to the activity, and disposition of the HCT/P. Section 1271.270(a) requires documentation of each step in manufacturing required in part 1271, subparts C and D. Section 1271.270(e) requires documentation of the name and address, and a list of responsibilities of any establishment that performs a manufacturing step for the establishment. Section 1271.290(d) and (e) require documentation of a method for recording the distinct identification code and type of each HCT/P distributed to a consignee to enable tracking from the consignee to the donor and to enable tracking from the donor to the consignee or final disposition. Section 1271.320(b) requires an establishment to maintain a record of each complaint that it receives. The complaint file must contain sufficient information about each complaint for proper review and evaluation of the complaint and for determining whether the complaint is an isolated event or represents a trend.

Respondents to this information collection are establishments that recover, process, store, label, package, or distribute any HCT/P, or perform donor screening or testing. The estimates provided below are based on most recent available information from FDA's database system and trade organizations. The hours per response and hours per record are based on data provided by the Eastern Research Group, or FDA experience with similar recordkeeping or reporting requirements.

There are an estimated 2,218 HCT/P establishments (conventional tissue, eye tissue, peripheral blood stem cell, stem cell products from cord blood, reproductive tissue, and sperm banks), including 667 manufacturers of HCT/P products regulated under the Federal Food, Drug, and Cosmetic Act and section 351 of the PHS Act (42 U.S.C. 262), that have registered and listed with FDA. In addition, we estimate that 182 new establishments have registered with FDA (§§ 1271.10(b)(1) and (b)(2) and 1271.25(a) and (b)). There are an estimated 1,221 listing updates (§§ 1271.10(b)(2), 1271.21(c)(ii), and 1271.25(c)) and 588 location/ownership amendments (§ 1271.26).

Under § 1271.55(a), an estimated total of 2,206,890 HCT/Ps (which include conventional tissues, eye tissues, hematopoetic stem cells/progenitor cells, and reproductive cells and tissues), and an estimated total of 2,066,890 non-reproductive cells and tissues (total HCT/Ps minus reproductive cells and tissues) are distributed per year by an estimated 1,551 establishments (2,218 − 667 = 1,551) with approved applications).

Under § 1271.60(c) and (d)(2), FDA estimates that 1,375 establishments shipped an estimated 572,000 HCT/P under quarantine, and that an estimated 25 establishments requested 78 exemptions from or alternative to any requirement under part 1271, subpart C or D, specifically under § 1271.155(a).

Under §§ 1271.290(c) and 1271.370(b) and (c), the estimated 1,561 non-reproductive HCT/P establishments label each of their 2,066,890 HCT/Ps with certain information. These establishments are also required to inform their consignees in writing of the requirements for tracking and of their established tracking system under § 1271.290(f).

FDA estimates 34 HCT/P establishments submitted 166 adverse reaction reports with 136 involving a communicable disease (§ 1271.350(a)(1)).

FDA estimates that 182 new establishments will create SOPs, and that 2,218 establishments will review and revise existing SOPs annually.

FDA estimates that 1,109 HCT/P establishments (2,218 × 50 percent = 1,109) and 781 non-reproductive HCT/P establishments (1,561 × 50 percent = 781) record and justify a departure from the procedures (§§ 1271.47(d) and 1271.265(c)(3)).

Under § 1271.50(a), HCT/P establishments are required to have a documented medical history interview about the donor's medical history and relevant social behavior as part of the donor's relevant medical records for each of the estimated total of 109,019 donors (which include conventional tissue donors, eye tissue donors, peripheral and cord blood stem cell donors, and reproductive cell and tissue donors), and the estimated total of 103,419 non-reproductive cells and tissue donors (total donors minus reproductive cell and tissue donors).

FDA estimates that 665 HCT/P establishments (2,218 × 30 percent = 665) document an urgent medical need of the product to notify the physician using the HCT/P (§§ 1271.60(d)(3) and 1271.65(b)(3)).

FDA also estimates that 1,774 HCT/P establishments (2,218 × 80 percent = 1,774) have to maintain records for an average of 2 contract establishments to perform their manufacturing process (§ 1271.270(e), and 1,249 HCT/P establishments (1,561 × 80 percent = 1,249) maintain an average of 5 complaint records annually (§ 1271.320(b)).

In some cases, the estimated burden may appear to be lower or higher than the burden experienced by individual establishments. The estimated burden in these charts is an estimated average burden, taking into account the range of impact each regulation may have.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours [3]
1271.10(b)(1) and 1271.21(b) [2]	2,218	1	2,218	.5 (30 minutes)	1,109
1271.10(b)(1) and (b)(2), 1271.21(a), and 1271.25(a) and (b) [2]	182	1	182	.75 (45 minutes)	137
1271.10(b)(2), 1271.21(c)(2)(ii) and 1271.25(c) [2]	1,221	1	1,221	.5 (30 minutes)	611
1271.26 [2]	588	1	588	.25 (15 minutes)	147
1271.155(a)	25	3.12	78	3	234
1271.350(a)(1) and (a)(3)	34	4.88	166	1	166
Total					2,404

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Using Form FDA 3356.
[3] Rounded to the nearest whole number.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Section	Number of record-keepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours [3]
New SOPs [2]	182	1	182	48	8,736
SOP Update [2]	2,218	1	2,218	24	53,232
1271.47(d)	1,109	1	1,109	1	1,109
1271.50(a)	2,218	49.15	109,019	5	545,095
1271.55(d)(1)	2,218	49.15	109,019	1	109,019
1271.55(d)(2)	2,218	1	2,218	1	2,218
1271.55(d)(4)	2,218	1	2,218	120	266,160
1271.60(d)(3) and (d)(4) 1271.65(b)(3)(iii)	665	1	665	2	1,330
1271.155(f)	25	3.12	78	.25 (15 minutes)	20
1271.160(b)(3) and (b)(6)	1,561	12	18,732	1	18,732
1271.160(d)	1,561	12	18,732	1	18,732
1271.190(d)(2)	1,561	12	18,732	1	18,732
1271.195(d)	1,561	12	18,732	1	18,732
1271.200(e)	1,561	12	18,732	1	18,732
1271.210(d)	1,561	12	18,732	1	18,732
1271.230(a)	1,561	12	18,732	1	18,732
1271.230(c)	1,561	1	1,561	1	1,561
1271.260(d)	1,561	12	18,732	.25 (15 minutes)	4,683
1271.260(e)	1,561	365	569,765	.083 (5 minutes)	47,291
1271.265(c)(1)	1,561	1,324.08	2,066,890	.083 (5 minutes)	171,552
1271.265(c)(3)	781	1	781	1	781
1271.265(e)	1,561	1,324.08	2,066,890	.083 (5 minutes)	171,552
1271.270(a)	1,561	1,324.08	2,066,890	.25 (15 minutes)	516,723
1271.270(e)	1,774	2	3,548	.5 (30 minutes)	1,774
1271.290(d) and (e)	1,561	66.25	103,419	.25 (15 minutes)	25,855
1271.320(b)	1,249	5	6,245	1	6,245
Total					2,066,060

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Sections 1271.47(a), 1271.85(b)(2), 1271.160(b)(2) and (d)(1), 1271.180(a), 1271.190(d)(1), 1271.200(b), 1271.200(c), 1271.230(a), 1271.250(a), and 1271.265(e).
[3] Rounded to the nearest whole number.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

21 CFR Section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
1271.55(a)	1,551	1,422.88	2,206,890	.5 (30 minutes)	1,103,445
1271.60(c) and (d)(2)	1,375	416	572,000	.5 (30 minutes)	286,000
1271.290(c)	1,561	1,324.08	2,066,890	.083 (5 minutes)	171,552
1271.290(f)	1,561	1	1,561	1	1,561
1271.370(b) and (c)	1,561	1,324.08	2,066,890	.25 (15 minutes)	516,723
Total					2,079,281

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: August 31, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–21351 Filed 9–6–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–1486]

Authorization of Emergency Use of an In Vitro Diagnostic Device for Detection of Zika Virus; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of an Emergency Use Authorization (EUA) (the Authorization) for an in vitro diagnostic device for detection of the Zika virus in response to the Zika virus outbreak in the Americas. FDA issued this Authorization under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) as requested by Viracor-IBT Laboratories, Inc. The Authorization contains, among other things, conditions on the emergency use of the authorized in vitro diagnostic device. The Authorization follows the February 26, 2016, determination by the Secretary of Health and Human Services (HHS) that there is a significant potential for a public health emergency that has a significant potential to affect national security or the health and security of U.S. citizens living abroad and that involves Zika virus. On the basis of such determination, the Secretary of HHS declared on February 26, 2016, that circumstances exist justifying the authorization of emergency use of in vitro diagnostic tests for detection of Zika virus and/or diagnosis of Zika virus infection, subject to the terms of any authorization issued under the FD&C Act. The Authorization, which includes an explanation of the reasons for issuance, is reprinted in this document.

DATES: The Authorization is effective as of July 19, 2016.

ADDRESSES: Submit written requests for single copies of the EUA to the Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4338, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the Authorization may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the Authorization.

FOR FURTHER INFORMATION CONTACT: Carmen Maher, Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4347, Silver Spring, MD 20993–0002, 301–796–8510 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb-3) as amended by the Project BioShield Act of 2004 (Pub. L. 108–276) and the Pandemic and All-Hazards Preparedness Reauthorization Act of 2013 (Pub. L. 113–5) allows FDA to strengthen the public health protections against biological, chemical, nuclear, and radiological agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations. With this EUA authority, FDA can help assure that medical countermeasures may be used in emergencies to diagnose, treat, or prevent serious or life-threatening diseases or conditions caused by biological, chemical, nuclear, or radiological agents when there are no adequate, approved, and available alternatives.

Section 564(b)(1) of the FD&C Act provides that, before an EUA may be issued, the Secretary of HHS must declare that circumstances exist justifying the authorization based on one of the following grounds: (1) A determination by the Secretary of Homeland Security that there is a domestic emergency, or a significant potential for a domestic emergency, involving a heightened risk of attack with a biological, chemical, radiological, or nuclear agent or agents; (2) a determination by the Secretary of Defense that there is a military emergency, or a significant potential for a military emergency, involving a heightened risk to U.S. military forces of attack with a biological, chemical, radiological, or nuclear agent or agents; (3) a determination by the Secretary of HHS that there is a public health emergency, or a significant potential for a public health emergency, that affects, or has a significant potential to affect, national security or the health and security of U.S. citizens living abroad, and that involves a biological, chemical, radiological, or nuclear agent or agents, or a disease or condition that may be attributable to such agent or agents; or (4) the identification of a material threat by the Secretary of Homeland Security under section 319F–2 of the Public Health Service (PHS) Act (42 U.S.C. 247d–6b) sufficient to affect national security or the health and security of U.S. citizens living abroad.

Once the Secretary of HHS has declared that circumstances exist justifying an authorization under section 564 of the FD&C Act, FDA may authorize the emergency use of a drug, device, or biological product if the Agency concludes that the statutory criteria are satisfied. Under section 564(h)(1) of the FD&C Act, FDA is required to publish in the **Federal Register** a notice of each authorization, and each termination or revocation of an authorization, and an explanation of the reasons for the action. Section 564 of the FD&C Act permits FDA to authorize the introduction into interstate commerce of a drug, device, or biological product intended for use when the Secretary of HHS has declared that circumstances exist justifying the authorization of emergency use. Products appropriate for emergency use may include products and uses that are not approved, cleared, or licensed under sections 505, 510(k), or 515 of the FD&C Act (21 U.S.C. 355, 360(k), and 360e) or section 351 of the PHS Act (42 U.S.C. 262). FDA may issue an EUA only if, after consultation with the HHS Assistant Secretary for Preparedness and Response, the Director of the National Institutes of Health, and the Director of the Centers for Disease Control and Prevention (to the extent feasible and appropriate given the applicable circumstances), FDA[1] concludes: (1) That an agent referred to in a declaration of emergency or threat can cause a serious or life-threatening disease or condition; (2) that, based on the totality of scientific evidence available to FDA, including data from adequate and well-controlled clinical trials, if available, it is reasonable to believe that: (A) The product may be effective in diagnosing, treating, or preventing (i) such disease or condition or (ii) a serious or life-threatening disease or condition caused by a product authorized under section 564, approved or cleared under the FD&C Act, or licensed under section 351 of the PHS Act, for diagnosing, treating, or preventing such a disease or condition caused by such an agent, and (B) the known and potential benefits of the product, when used to diagnose, prevent, or treat such disease or condition, outweigh the known and potential risks of the product, taking into consideration the material threat posed by the agent or agents identified in a declaration under section 564(b)(1)(D) of the FD&C Act, if applicable; (3) that there is no adequate, approved, and available alternative to the product for diagnosing, preventing, or treating such disease or condition; and (4) that such other criteria as may be prescribed by regulation are satisfied.

No other criteria for issuance have been prescribed by regulation under section 564(c)(4) of the FD&C Act. Because the statute is self-executing, regulations or guidance are not required for FDA to implement the EUA authority.

II. EUA Request for an In Vitro Diagnostic Device for Detection of the Zika Virus

On February 26, 2016, the Secretary of HHS determined that there is a significant potential for a public health emergency that has a significant potential to affect national security or the health and security of U.S. citizens living abroad and that involves Zika virus. On February 26, 2016, under section 564(b)(1) of the FD&C Act, and on the basis of such determination, the Secretary of HHS declared that circumstances exist justifying the authorization of emergency use of in vitro diagnostic tests for detection of Zika virus and/or diagnosis of Zika virus infection, subject to the terms of any authorization issued under section 564 of the FD&C Act. Notice of the determination and declaration of the Secretary was published in the **Federal Register** on March 2, 2016 (81 FR 10878). On July 7, 2016, Viracor-IBT Laboratories, Inc. requested, and on July 19, 2016, FDA issued, an EUA for the Zika Virus Real-time RT–PCR test, subject to the terms of the Authorization.

III. Electronic Access

An electronic version of this document and the full text of the Authorization are available on the Internet at *http://www.regulations.gov.*

IV. The Authorization

Having concluded that the criteria for issuance of the Authorization under section 564(c) of the FD&C Act are met, FDA has authorized the emergency use of an in vitro diagnostic device for detection of Zika virus subject to the terms of the Authorization. The Authorization in its entirety (not including the authorized versions of the fact sheets and other written materials) follows and provides an explanation of the reasons for its issuance, as required by section 564(h)(1) of the FD&C Act:

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[1] The Secretary of HHS has delegated the authority to issue an EUA under section 564 of the FD&C Act to the Commissioner of Food and Drugs.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration
Silver Spring, MD 20993

July 19, 2016

Michael Seymour
Manager of Regulatory Affairs and Quality
Assurance
Viracor-IBT Laboratories, Inc.
1001 NW Technology Drive
Lee's Summit, MO 64086

Dear Mr. Seymour:

This letter is in response to your request that the Food and Drug Administration (FDA) issue an Emergency Use Authorization (EUA) for emergency use of Viracor-IBT Laboratories, Inc.'s ("Viracor-IBT") Zika Virus Real-time RT-PCR test for the qualitative detection of RNA from Zika virus in human serum, plasma or urine (collected alongside a patient-matched serum or plasma specimen) from individuals meeting Centers for Disease Control and Prevention (CDC) Zika virus clinical criteria (e.g., clinical signs and symptoms associated with Zika virus infection) and/or CDC Zika virus epidemiological criteria (e.g., history of residence in or travel to a geographic region with active Zika transmission at the time of travel, or other epidemiologic criteria for which Zika virus testing may be indicated). Testing is limited to Viracor-IBT's laboratory in Lee's Summit, MO, or other laboratories designated by Viracor-IBT that are also certified under the Clinical Laboratory Improvement Amendments of 1988 (CLIA), 42 U.S.C. §263a, to perform high complexity tests, pursuant to section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. § 360bbb-3).[1] Assay results are for the identification of Zika viral RNA. Zika viral RNA is generally detectable in these specimens during the acute phase of infection (approximately 7 days in serum, possibly longer in urine, following onset of symptoms, if present).

On February 26, 2016, pursuant to section 564(b)(1)(C) of the Act (21 U.S.C. § 360bbb-3(b)(1)(C)), the Secretary of Health and Human Services (HHS) determined that there is a significant potential for a public health emergency that has a significant potential to affect national security or the health and security of United States citizens living abroad and that involves Zika virus.[2] Pursuant to section 564(b)(1) of the Act (21 U.S.C. § 360bbb-3(b)(1)), and on the basis of such determination, the Secretary of HHS then declared that circumstances exist justifying the authorization of the emergency use of *in vitro* diagnostic tests for detection of Zika virus and/or diagnosis of Zika virus infection, subject to the terms of any authorization issued under 21 U.S.C. § 360bbb-3(a).[3]

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[1] For ease of reference, this letter will refer to "Viracor-IBT's laboratory in Lee's Summit, MO, or other laboratories designated by Viracor-IBT that are also certified under the Clinical Laboratory Improvement Amendments of 1988 (CLIA), 42 U.S.C. §263a, to perform high complexity tests" as "authorized laboratories."

[2] As amended by the Pandemic and All Hazards Preparedness Reauthorization Act, Pub. L. No. 113-5, under section 564(b)(1)(C) of the Act, the Secretary may make a determination of a public health emergency, or of a significant potential for a public health emergency.

Having concluded that the criteria for issuance of this authorization under section 564(c) of the Act (21 U.S.C. § 360bbb-3(c)) are met, I am authorizing the emergency use of the Zika Virus Real-time RT-PCR test (as described in the Scope of Authorization section of this letter (Section II)) in individuals meeting CDC Zika virus clinical criteria (e.g., clinical signs and symptoms associated with Zika virus infection) and/or CDC Zika virus epidemiological criteria (e.g., history of residence in or travel to a geographic region with active Zika transmission at the time of travel, or other epidemiologic criteria for which Zika virus testing may be indicated) (as described in the Scope of Authorization section of this letter (Section II)) for the detection of Zika virus infection by authorized laboratories, subject to the terms of this authorization.

I. Criteria for Issuance of Authorization

I have concluded that the emergency use of the Zika Virus Real-time RT-PCR test for the detection of Zika virus and diagnosis of Zika virus infection in the specified population meets the criteria for issuance of an authorization under section 564(c) of the Act, because I have concluded that:

1. The Zika virus can cause Zika virus infection, a serious or life-threatening disease or condition to humans infected with the virus;

2. Based on the totality of scientific evidence available to FDA, it is reasonable to believe that the Zika Virus Real-time RT-PCR test, when used with the specified instrument and in accordance with the Scope of Authorization, may be effective in detecting Zika virus and diagnosing Zika virus infection, and that the known and potential benefits of the Zika Virus Real-time RT-PCR test for detecting Zika virus and diagnosing Zika virus infection outweigh the known and potential risks of such product; and

3. There is no adequate, approved, and available alternative to the emergency use of the Zika Virus Real-time RT-PCR test for detecting Zika virus and diagnosing Zika virus infection.[4]

II. Scope of Authorization

I have concluded, pursuant to section 564(d)(1) of the Act, that the scope of this authorization is limited to the use of the authorized Zika Virus Real-time RT-PCR test by authorized laboratories for the detection of RNA from Zika virus and diagnosis of Zika virus infection in individuals meeting CDC Zika virus clinical criteria (e.g., clinical signs and symptoms associated with Zika virus infection) and/or CDC Zika virus epidemiological criteria (e.g., history of residence in or travel to a geographic region with active Zika transmission at the time of travel, or other epidemiologic criteria for which Zika virus testing may be indicated).

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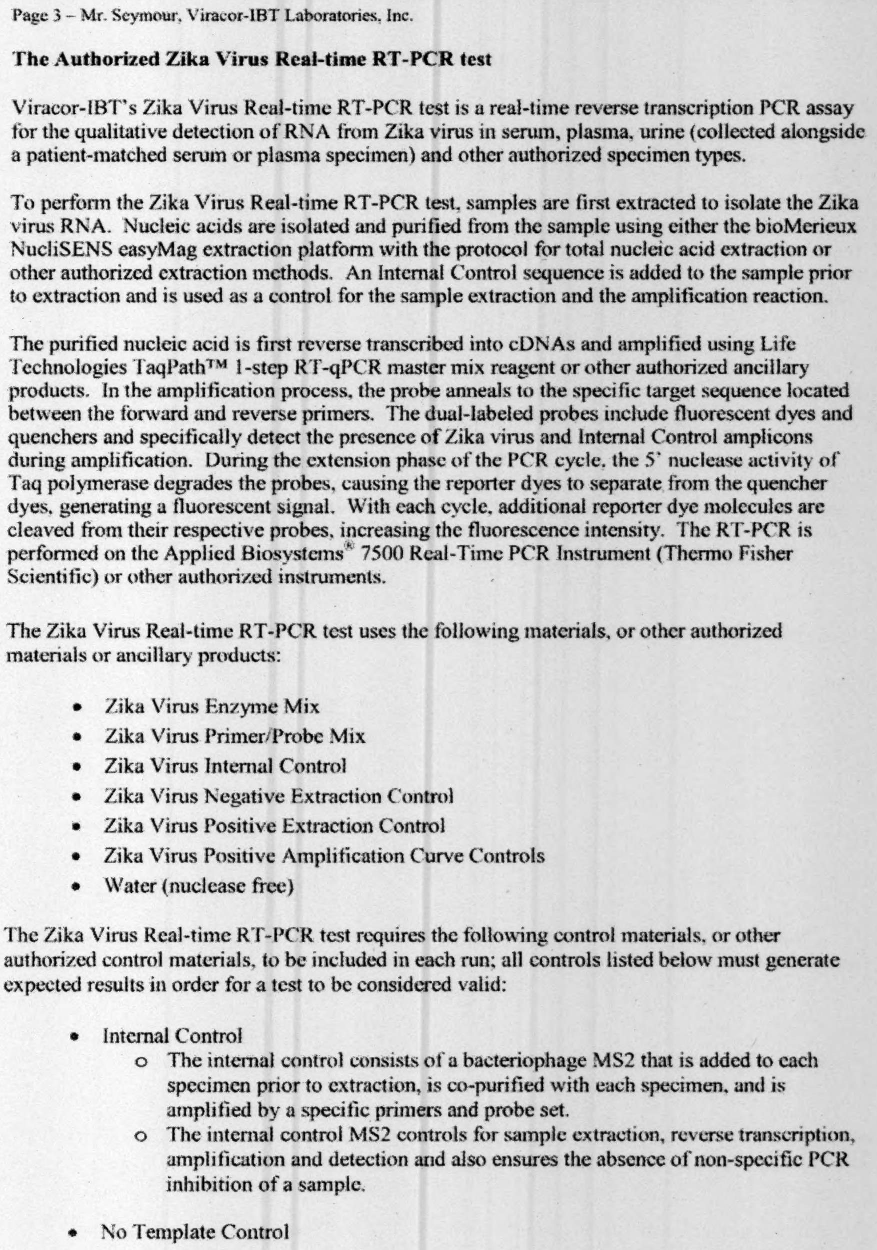
[3] HHS. *Determination and Declaration Regarding Emergency Use of in Vitro Diagnostic Tests for Detection of Zika Virus and/or Diagnosis of Zika Virus Infection*. 81 Fed. Reg. 10878 (March 2, 2016).

[4] No other criteria of issuance have been prescribed by regulation under section 564(c)(4) of the Act.



The Authorized Zika Virus Real-time RT-PCR test

Viracor-IBT's Zika Virus Real-time RT-PCR test is a real-time reverse transcription PCR assay for the qualitative detection of RNA from Zika virus in serum, plasma, urine (collected alongside a patient-matched serum or plasma specimen) and other authorized specimen types.

To perform the Zika Virus Real-time RT-PCR test, samples are first extracted to isolate the Zika virus RNA. Nucleic acids are isolated and purified from the sample using either the bioMerieux NucliSENS easyMag extraction platform with the protocol for total nucleic acid extraction or other authorized extraction methods. An Internal Control sequence is added to the sample prior to extraction and is used as a control for the sample extraction and the amplification reaction.

The purified nucleic acid is first reverse transcribed into cDNAs and amplified using Life Technologies TaqPath™ 1-step RT-qPCR master mix reagent or other authorized ancillary products. In the amplification process, the probe anneals to the specific target sequence located between the forward and reverse primers. The dual-labeled probes include fluorescent dyes and quenchers and specifically detect the presence of Zika virus and Internal Control amplicons during amplification. During the extension phase of the PCR cycle, the 5' nuclease activity of Taq polymerase degrades the probes, causing the reporter dyes to separate from the quencher dyes, generating a fluorescent signal. With each cycle, additional reporter dye molecules are cleaved from their respective probes, increasing the fluorescence intensity. The RT-PCR is performed on the Applied Biosystems® 7500 Real-Time PCR Instrument (Thermo Fisher Scientific) or other authorized instruments.

The Zika Virus Real-time RT-PCR test uses the following materials, or other authorized materials or ancillary products:

- Zika Virus Enzyme Mix
- Zika Virus Primer/Probe Mix
- Zika Virus Internal Control
- Zika Virus Negative Extraction Control
- Zika Virus Positive Extraction Control
- Zika Virus Positive Amplification Curve Controls
- Water (nuclease free)

The Zika Virus Real-time RT-PCR test requires the following control materials, or other authorized control materials, to be included in each run; all controls listed below must generate expected results in order for a test to be considered valid:

- Internal Control
    - The internal control consists of a bacteriophage MS2 that is added to each specimen prior to extraction, is co-purified with each specimen, and is amplified by a specific primers and probe set.
    - The internal control MS2 controls for sample extraction, reverse transcription, amplification and detection and also ensures the absence of non-specific PCR inhibition of a sample.
- No Template Control

  - RNase-, DNase-free water.
  - A no template control is included in each RT-PCR run of specimen extractions to monitor for Zika virus contamination.

- Zika Virus Negative Extraction Control
  - Known negative sample.
  - A negative extraction control is included in each run of specimen extractions to monitor for Zika virus contamination.

- Zika Virus Positive Extraction Control
  - Live Zika whole virus.
  - A positive control is included in each run of specimen extractions to monitor nucleic acid isolation and detection of Zika virus RNA.

- Zika Virus Positive Amplification Curve Controls
  - Modified plasmid with inserted nucleotide regions from the Zika strain KU497555 (Brazil, 2015) – high and low concentrations.
  - The positive amplification curve controls are included in each RT-PCR run of specimen extractions to demonstrate that the anticipated level of sensitivity has been achieved.

To produce a valid run the test controls must meet the performance specifications outlined in the Instructions for Use.

The above described Zika Virus Real-time RT-PCR test, when labeled consistently with the labeling authorized by FDA entitled "Zika Virus Real-time RT-PCR, Viracor-IBT Laboratories, Inc., Instructions for Use" (available at http://www.fda.gov/MedicalDevices/Safety/EmergencySituations/ucm161496.htm), which may be revised by Viracor-IBT in consultation with the Division of Microbiology Devices (DMD)/Office of In Vitro Diagnostics and Radiological Health (OIR)/Center for Devices and Radiological Health (CDRH), is authorized to be distributed to and used by authorized laboratories under this EUA, despite the fact that it does not meet certain requirements otherwise required by federal law.

The above described Zika Virus Real-time RT-PCR test is authorized to be accompanied by the following information pertaining to the emergency use, which is authorized to be made available to health care providers, pregnant women, and other patients:

- Fact Sheet for Health Care Providers: Interpreting Viracor-IBT Laboratories, Inc.'s Zika Virus Real-time RT-PCR Test Results
- Fact Sheet for Pregnant Women: Understanding Results from the Viracor-IBT Laboratories, Inc.'s Zika Virus Real-time RT-PCR Test
- Fact Sheet for Patients: Understanding Results from the Viracor-IBT Laboratories, Inc.'s Zika Virus Real-time RT-PCR Test

As described in Section IV below, Viracor-IBT is also authorized to make available additional information relating to the emergency use of the authorized Zika Virus Real-time RT-PCR test that is consistent with, and does not exceed, the terms of this letter of authorization.

I have concluded, pursuant to section 564(d)(2) of the Act, that it is reasonable to believe that the known and potential benefits of the authorized Zika Virus Real-time RT-PCR test in the specified population, when used for detection of Zika virus and to diagnose Zika virus infection and used consistently with the Scope of Authorization of this letter (Section II), outweigh the known and potential risks of such a product.

I have concluded, pursuant to section 564(d)(3) of the Act, based on the totality of scientific evidence available to FDA, that it is reasonable to believe that the authorized Zika Virus Real-time RT-PCR test may be effective in the detection of Zika virus and diagnosis of Zika virus infection, when used consistently with the Scope of Authorization of this letter (Section II), pursuant to section 564(c)(2)(A) of the Act.

FDA has reviewed the scientific information available to FDA, including the information supporting the conclusions described in Section I above, and concludes that the authorized Zika Virus Real-time RT-PCR test, when used for detection of Zika virus and to diagnose Zika virus infection in the specified population (as described in the Scope of Authorization of this letter (Section II)), meets the criteria set forth in section 564(c) of the Act concerning safety and potential effectiveness.

The emergency use of the authorized Zika Virus Real-time RT-PCR test under this EUA must be consistent with, and may not exceed, the terms of this letter, including the Scope of Authorization (Section II) and the Conditions of Authorization (Section IV). Subject to the terms of this EUA and under the circumstances set forth in the Secretary of HHS's determination described above and the Secretary of HHS's corresponding declaration under section 564(b)(1), the Zika Virus Real-time RT-PCR test described above is authorized to detect Zika virus and diagnose Zika virus infection in individuals meeting CDC Zika virus clinical criteria (e.g., clinical signs and symptoms associated with Zika virus infection) and/or CDC Zika virus epidemiological criteria (e.g., history of residence in or travel to a geographic region with active Zika virus transmission at the time of travel, or other epidemiologic criteria for which Zika virus testing may be indicated).

This EUA will cease to be effective when the HHS declaration that circumstances exist to justify the EUA is terminated under section 564(b)(2) of the Act or when the EUA is revoked under section 564(g) of the Act.

III. Waiver of Certain Requirements

I am waiving the following requirements for the Zika Virus Real-time RT-PCR test during the duration of this EUA:

- Current good manufacturing practice requirements, including the quality system requirements under 21 CFR Part 820 with respect to the design, manufacture, packaging, labeling, storage, and distribution of the Zika Virus Real-time RT-PCR test.

- Labeling requirements for cleared, approved, or investigational devices, including labeling requirements under 21 CFR 809.10 and 21 CFR 809.30, except for the intended use statement (21 CFR 809.10(a)(2), (b)(2)), adequate directions for use (21 U.S.C. 352(f)), (21 CFR 809.10(b)(5), (7), and (8)), any appropriate limitations on the use of the device including information required under 21 CFR 809.10(a)(4), and any available information regarding performance of the device, including requirements under 21 CFR 809.10(b)(12).

IV. Conditions of Authorization

Pursuant to section 564 of the Act, I am establishing the following conditions on this authorization:

Viracor-IBT Laboratories, Inc. and Its Authorized Distributor(s)

A. Viracor-IBT and its authorized distributor(s) will distribute the authorized Zika Virus Real-time RT-PCR test with the authorized labeling, as may be revised by Viracor-IBT Laboratories, Inc. in consultation with DMD/OIR/CDRH, only to authorized laboratories.

B. Viracor-IBT and its authorized distributor(s) will provide to authorized laboratories the authorized Zika Virus Real-time RT-PCR test Fact Sheet for Health Care Providers, the authorized Zika Virus Real-time RT-PCR test Fact Sheet for Pregnant Women, and the authorized Zika Virus Real-time RT-PCR test Fact Sheet for Patients.

C. Viracor-IBT and its authorized distributor(s) will make available on their websites the authorized Zika Virus Real-time RT-PCR test Fact Sheet for Health Care Providers, the authorized Zika Virus Real-time RT-PCR test Fact Sheet for Pregnant Women, and the authorized Zika Virus Real-time RT-PCR test Fact Sheet for Patients.

D. Viracor-IBT and its authorized distributor(s) will inform authorized laboratories and relevant public health authority(ies) of this EUA, including the terms and conditions herein.

E. Viracor-IBT and its authorized distributor(s) will ensure that the authorized laboratories using the authorized Zika Virus Real-time RT-PCR test have a process in place for reporting test results to health care providers and relevant public health authorities, as appropriate.[5]

F. Through a process of inventory control, Viracor-IBT and its authorized distributor(s) will maintain records of device usage.

G. Viracor-IBT and its authorized distributor(s) will collect information on the performance of the test. Viracor-IBT will report to FDA any suspected occurrence of false positive and false negative results and significant deviations from the established performance characteristics of the test of which Viracor-IBT becomes aware.

H. Viracor-IBT and its authorized distributor(s) are authorized to make available additional information relating to the emergency use of the authorized Zika Virus Real-

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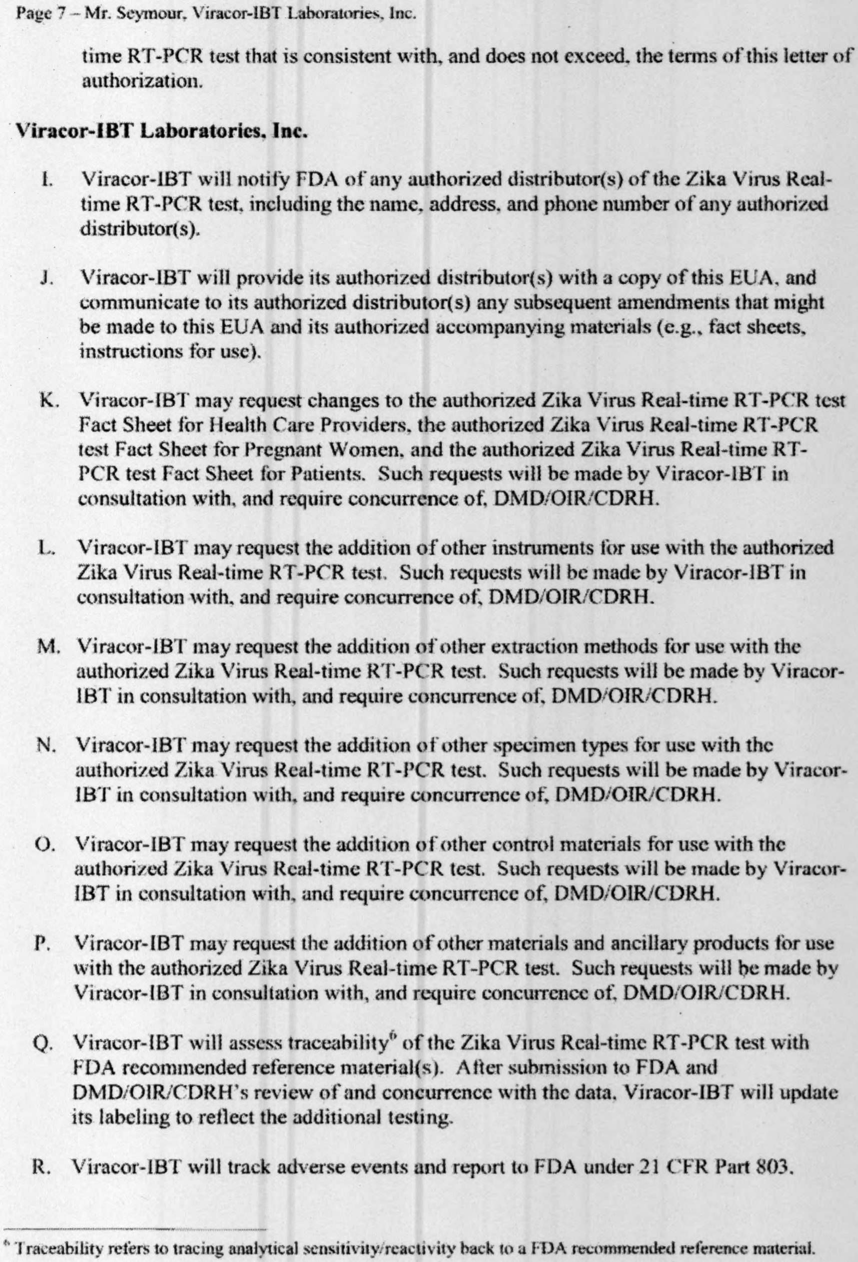
[5] For questions related to reporting Zika test results to relevant public health authorities, it is recommended that Viracor-IBT and authorized laboratories consult with the applicable country, state or territory health department(s). According to CDC, Zika is a nationally notifiable condition. http://www.cdc.gov/zika/.



time RT-PCR test that is consistent with, and does not exceed, the terms of this letter of authorization.

Viracor-IBT Laboratories, Inc.

I. Viracor-IBT will notify FDA of any authorized distributor(s) of the Zika Virus Real-time RT-PCR test, including the name, address, and phone number of any authorized distributor(s).

J. Viracor-IBT will provide its authorized distributor(s) with a copy of this EUA, and communicate to its authorized distributor(s) any subsequent amendments that might be made to this EUA and its authorized accompanying materials (e.g., fact sheets, instructions for use).

K. Viracor-IBT may request changes to the authorized Zika Virus Real-time RT-PCR test Fact Sheet for Health Care Providers, the authorized Zika Virus Real-time RT-PCR test Fact Sheet for Pregnant Women, and the authorized Zika Virus Real-time RT-PCR test Fact Sheet for Patients. Such requests will be made by Viracor-IBT in consultation with, and require concurrence of, DMD/OIR/CDRH.

L. Viracor-IBT may request the addition of other instruments for use with the authorized Zika Virus Real-time RT-PCR test. Such requests will be made by Viracor-IBT in consultation with, and require concurrence of, DMD/OIR/CDRH.

M. Viracor-IBT may request the addition of other extraction methods for use with the authorized Zika Virus Real-time RT-PCR test. Such requests will be made by Viracor-IBT in consultation with, and require concurrence of, DMD/OIR/CDRH.

N. Viracor-IBT may request the addition of other specimen types for use with the authorized Zika Virus Real-time RT-PCR test. Such requests will be made by Viracor-IBT in consultation with, and require concurrence of, DMD/OIR/CDRH.

O. Viracor-IBT may request the addition of other control materials for use with the authorized Zika Virus Real-time RT-PCR test. Such requests will be made by Viracor-IBT in consultation with, and require concurrence of, DMD/OIR/CDRH.

P. Viracor-IBT may request the addition of other materials and ancillary products for use with the authorized Zika Virus Real-time RT-PCR test. Such requests will be made by Viracor-IBT in consultation with, and require concurrence of, DMD/OIR/CDRH.

Q. Viracor-IBT will assess traceability[6] of the Zika Virus Real-time RT-PCR test with FDA recommended reference material(s). After submission to FDA and DMD/OIR/CDRH's review of and concurrence with the data, Viracor-IBT will update its labeling to reflect the additional testing.

R. Viracor-IBT will track adverse events and report to FDA under 21 CFR Part 803.

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[6] Traceability refers to tracing analytical sensitivity/reactivity back to a FDA recommended reference material.

Authorized Laboratories

S. Authorized laboratories will include with reports of the results of the Zika Virus Real-time RT-PCR test the authorized Fact Sheet for Health Care Providers, the authorized Fact Sheet for Pregnant Women, and the authorized Fact Sheet for Patients. Under exigent circumstances, other appropriate methods for disseminating these Fact Sheets may be used, which may include mass media.

T. Authorized laboratories will perform the Zika Virus Real-time RT-PCR test on the Applied Biosystems® 7500 Real-Time PCR Instrument or other authorized instruments.

U. Authorized laboratories will perform the Zika Virus Real-time RT-PCR test using the bioMerieux NucliSENS easyMag extraction platform with the protocol for total nucleic acid extraction or with other authorized extraction methods.

V. Authorized laboratories will perform the Zika Virus Real-time RT-PCR test on serum, plasma, or urine (collected with a patient-matched serum or plasma specimen) or with other authorized specimen types.

W. Authorized laboratories will have a process in place for reporting test results to health care providers and relevant public health authorities, as appropriate.[7]

X. Authorized laboratories will collect information on the performance of the test and report to Viracor-IBT, any suspected occurrence of false positive or false negative results of which they become aware.

Y. All laboratory personnel using the test should be appropriately trained in RT-PCR techniques and use appropriate laboratory and personal protective equipment when handling this kit, and use the test in accordance with the authorized labeling.

Viracor-IBT Laboratories, Inc., Its Authorized Distributor(s) and Authorized Laboratories

Z. Viracor-IBT, its authorized distributor(s) and authorized laboratories, will ensure that any records associated with this EUA are maintained until notified by FDA. Such records will be made available to FDA for inspection upon request.

Conditions Related to Advertising and Promotion

AA. All advertising and promotional descriptive printed matter relating to the use of the authorized Zika Virus Real-time RT-PCR test shall be consistent with the Fact Sheets and authorized labeling, as well as the terms set forth in this EUA and the applicable requirements set forth in the Act and FDA regulations.

BB. All advertising and promotional descriptive printed matter relating to the use of the authorized Zika Virus Real-time RT-PCR test shall clearly and conspicuously state

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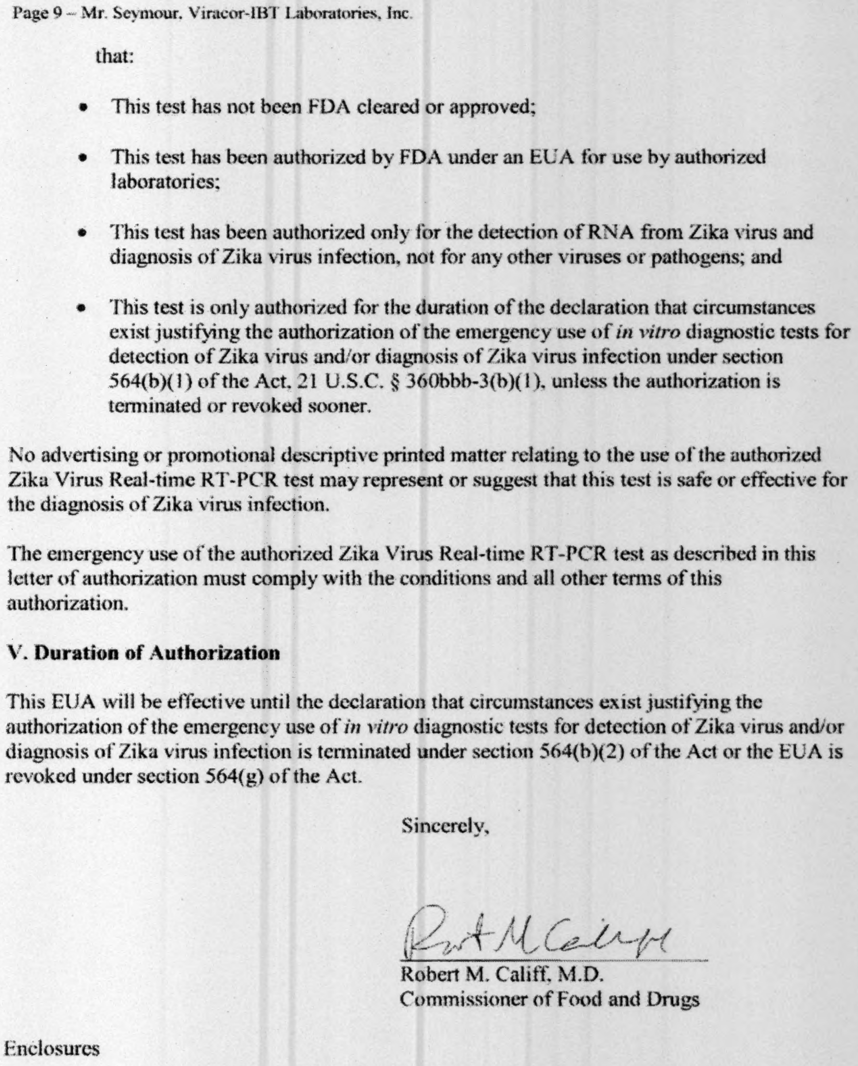
[7] For questions related to reporting Zika test results to relevant public health authorities, it is recommended that Viracor-IBT and authorized laboratories consult with the applicable country, state or territory health department(s). According to CDC, Zika is a nationally notifiable condition. http://www.cdc.gov/zika/.



that:

- This test has not been FDA cleared or approved;
- This test has been authorized by FDA under an EUA for use by authorized laboratories;
- This test has been authorized only for the detection of RNA from Zika virus and diagnosis of Zika virus infection, not for any other viruses or pathogens; and
- This test is only authorized for the duration of the declaration that circumstances exist justifying the authorization of the emergency use of *in vitro* diagnostic tests for detection of Zika virus and/or diagnosis of Zika virus infection under section 564(b)(1) of the Act, 21 U.S.C. § 360bbb-3(b)(1), unless the authorization is terminated or revoked sooner.

No advertising or promotional descriptive printed matter relating to the use of the authorized Zika Virus Real-time RT-PCR test may represent or suggest that this test is safe or effective for the diagnosis of Zika virus infection.

The emergency use of the authorized Zika Virus Real-time RT-PCR test as described in this letter of authorization must comply with the conditions and all other terms of this authorization.

V. Duration of Authorization

This EUA will be effective until the declaration that circumstances exist justifying the authorization of the emergency use of *in vitro* diagnostic tests for detection of Zika virus and/or diagnosis of Zika virus infection is terminated under section 564(b)(2) of the Act or the EUA is revoked under section 564(g) of the Act.

Sincerely,

Robert M. Califf, M.D.
Commissioner of Food and Drugs

Enclosures

Dated: August 31, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–21353 Filed 9–6–16; 8:45 am]

BILLING CODE 4164–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–2523]

Request for Comment on the Status of Vinpocetine

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is requesting comments related to the regulatory status of vinpocetine. Specifically, we request comments on our tentative conclusion that vinpocetine is not a dietary ingredient and is excluded from the definition of dietary supplement in the Federal Food, Drug, and Cosmetic Act (FD&C Act). This action is being taken as part of an administrative proceeding to determine the regulatory status of vinpocetine. All comments submitted by the comment deadline (see **DATES**) will be accepted as part of the official record for this proceeding.

DATES: Submit either electronic or written comments on the notice by November 7, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–N–2523 for "Request for Comment on the Status of Vinpocetine." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Cara Welch, Center for Food Safety and Applied Nutrition (HFS–810), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2333.

SUPPLEMENTARY INFORMATION:

I. Introduction

We are initiating an administrative proceeding under 21 CFR 10.25(b) to determine the regulatory status of vinpocetine (chemical name: Ethyl apovincaminate). Specifically, we are trying to determine: (1) Whether vinpocetine is a dietary ingredient within the meaning of the FD&C Act and (2) whether it is excluded from being a dietary supplement under the FD&C Act.

A. Statutory Background

Under section 201(ff)(1) of the FD&C Act (21 U.S.C. 321(ff)(1)), the term "dietary supplement" is defined in part as a product (other than tobacco) intended to supplement the diet that bears or contains one or more of the following dietary ingredients: (A) A vitamin; (B) a mineral; (C) an herb or other botanical; (D) an amino acid; (E) a dietary substance for use by man to supplement the diet by increasing the total dietary intake; or (F) a concentrate, metabolite, constituent, extract, or combination of any ingredient described in clause (A), (B), (C), (D), or (E).

Additionally, under section 201(ff)(3)(B)(ii) of the FD&C Act, a dietary supplement cannot include "an article authorized for investigation as a new drug . . . for which substantial clinical investigations have been instituted and for which the existence of such investigations has been made public" unless the article was marketed as a dietary supplement or as a food before such authorization.

Recently, questions have been raised as to whether vinpocetine is a dietary ingredient and is excluded from the definition of dietary supplement under sections 201(ff)(1) and (3) of the FD&C Act, respectively.

B. Factual Background

According to records on file in FDA's Center for Drug Evaluation and Research, vinpocetine was authorized for investigation as a new drug in 1981.[1] A trade press article from 1985 reported that four single-center phase 3 clinical trials[2] of vinpocetine had been completed and that two major multicenter studies were ongoing (Ref. 1). A 1986 article in a major newspaper reported that Ayerst had recently completed a study of vinpocetine for the treatment of multiple-infarct dementia at eight institutions in the United States (Ref. 2). An article published in a medical journal in 1986 reported on the results of a double-blind study of vinpocetine in elderly patients with central nervous system degenerative disorders (Ref. 3). A trade press article published in 1988 reported that vinpocetine was in phase 3 clinical trials for Alzheimer's disease (Ref. 4). These articles document that substantial clinical investigations of vinpocetine were instituted and that the existence of these substantial clinical investigations was made public.

On July 8, 1997, a new dietary ingredient notification[3] for vinpocetine was submitted to FDA (see FDA's Table of New Dietary Ingredient Notifications

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[1] An article becomes "authorized for investigation as a new drug" after the sponsor has submitted an investigational new drug application (IND) to FDA and the IND has gone into effect. Unless FDA notifies the sponsor that the clinical investigation described in the IND has been placed on clinical hold, the IND goes into effect 30 days after being submitted to FDA (21 CFR 312.40(b)). Although FDA will not disclose the existence of an IND that has not previously been publicly disclosed or acknowledged (see 21 CFR 312.130), the existence of the 1981 IND for vinpocetine was publicly disclosed in the press no later than 1986 (Ref. 2).

[2] Generally speaking, under our regulations pertaining to investigational new drugs, there are three phases of a clinical investigation of a new drug; phase 3 trials are the last in the sequence and are "expanded controlled and uncontrolled trials" that are "performed after preliminary evidence suggesting effectiveness of the drug has been obtained, and are intended to gather the additional information about effectiveness and safety that is needed to evaluate the overall benefit-risk relationship of the drug and to provide an adequate basis for physician labeling" (21 CFR 312.21(c)).

[3] As defined in section 413(d) of the FD&C Act (21 U.S.C. 350b(d)), the term "new dietary ingredient" means a dietary ingredient that was not marketed in the United States before October 15, 1994. Section 413(a) of the FD&C Act (21 U.S.C. 350b(a)) requires manufacturers and distributors who wish to market dietary supplements that contain "new dietary ingredients" to submit a notification containing safety information to FDA before they begin marketing, unless the new dietary ingredient and all other dietary ingredients in the dietary supplement have been present in the food supply, without chemical alteration, as articles used for food.

(available on the Web at *http://www.fda.gov/food/dietarysupplements/newdietaryingredientsnotificationprocess/ucm109764.htm#new_din*)). Four additional new dietary ingredient notifications for vinpocetine were later submitted to FDA.[4]

C. Vinpocetine and Section 201(ff)(1) of the FD&C Act

We first consider whether vinpocetine is a dietary ingredient under section 201(ff)(1) of the FD&C Act—specifically, whether it is a vitamin, mineral, herb or other botanical, amino acid, dietary substance for use by man to supplement the diet by increasing the total dietary intake, or a concentrate, metabolite, constituent, extract, or combination of dietary ingredients from the preceding categories. We are not aware of any argument that vinpocetine is a vitamin, a mineral, or an amino acid. Thus, vinpocetine does not appear to qualify as a dietary ingredient under section 201(ff)(1)(A), (B), or (D) of the FD&C Act.

Vinpocetine is not an herb or other botanical, nor is it a constituent of any botanical. Rather, vinpocetine is a synthetic compound, derived from vincamine, an alkaloid found in the *Vinca minor* plant, or tabersonine, an alkaloid found in Voacanga seeds (Ref. 5). Vinpocetine can be formed synthetically from vincamine, including via a "one-pot" synthesis, through transesterification and/or dehydration of vincamine in ethanol using Lewis acids and catalyzed by ferric chloride (Refs. 5 and 6). The process to prepare vinpocetine from tabersonine involves first converting to vincamine via hydrogenation, oxidation, reduction and, finally, isolation of vincamine (Ref. 7). The previously discussed method of producing vinpocetine from vincamine can then be used. As a synthetic compound, vinpocetine is not an herb or other botanical. Thus, vinpocetine does not appear to qualify as a dietary ingredient under section 201(ff)(1)(C) of the FD&C Act.

Vinpocetine is not a dietary substance for use by man to supplement the diet by increasing the total dietary intake. Extensive database and literature searches did not identify any food use of vinpocetine. Thus, vinpocetine does not appear to qualify as a dietary ingredient under section 201(ff)(1)(E) of the FD&C Act.

Finally, vinpocetine is not a concentrate, metabolite, constituent, extract, or combination of any ingredient described in section 201(ff)(1)(A), (B), (C), (D), or (E) of the FD&C Act. We are not aware of any factual basis to conclude that vinpocetine is a concentrate, metabolite, constituent, extract, or combination of a vitamin, mineral, amino acid, or dietary substance. As described earlier, vinpocetine is not found in *V. minor*, Voacanga, or any other botanical, but rather is a synthetic derivative of vincamine or tabersonine. Therefore, vinpocetine cannot be a concentrate, constituent, or extract of a botanical. After extensive literature and database searches, we have been unable to find any evidence that vinpocetine is a concentrate, metabolite, constituent, extract, or combination of another dietary ingredient or dietary ingredients. Therefore, vinpocetine does not appear to qualify as a dietary ingredient under section 201(ff)(1)(F) of the FD&C Act.

We therefore tentatively conclude that vinpocetine is not a dietary ingredient under section 201(ff)(1) of the FD&C Act because it does not fit any of the dietary ingredient categories.

D. Vinpocetine and Section 201(ff)(3) of the FD&C Act

As noted above, the statutory definition of "dietary supplement" excludes an article authorized for investigation as a new drug for which substantial clinical investigations have been instituted and made public, unless the article was marketed as a dietary supplement or as a food before such authorization (see section 201(ff)(3)(B)(ii) of the FD&C Act).

Based on FDA's IND records and articles published between 1985 and 1988 that mention or report on phase 3 clinical trials for vinpocetine (Refs. 1 to 4), it appears that: (1) Vinpocetine was authorized for investigation as a new drug in 1981, long before the first new dietary ingredient notification for vinpocetine was filed in 1997 and, therefore, also long before vinpocetine was marketed as a dietary supplement; (2) substantial clinical investigations of vinpocetine have been instituted, and (3) the existence of such investigations has been made public.

We therefore tentatively conclude that vinpocetine is excluded from the dietary supplement definition under section 201(ff)(3)(B) of the FD&C Act.

E. Tentative Conclusion

Based on the evidence available to us to date, we tentatively conclude that vinpocetine is not a dietary ingredient as defined in section 201(ff)(1) of the FD&C Act. We further tentatively conclude that vinpocetine is excluded from the dietary supplement definition under section 201(ff)(3)(B) of the FD&C Act and therefore may not be marketed as or in a dietary supplement. We are interested in receiving information that would inform our final decision on the regulatory status of vinpocetine, such as information about any food uses of vinpocetine and information on the date vinpocetine was first marketed as a food or as a dietary supplement.

To afford all interested parties an adequate opportunity to participate in this matter, we request comments and other supporting information related to this matter. Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document.

II. References

The following references are on display in FDA's Division of Dockets Management (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *http://www.regulations.gov*. FDA has verified the Web site addresses, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

1. The Pink Sheet, "Ayerst Planning on First Quarter 1986 NDA Submission for Alredase (Tolrestat) in Diabetic Neuropathy; Firm is Shooting for Early 1987 Market Launch," June 17, 1985. Retrieved from: *https://pink.pharmamedtechbi.com/PS008480/AYERST-PLANNING-ON-FIRST-QUARTER-1986-NDA-SUBMISSION-FOR-ALREDASE-TOLRESTAT-IN-DIABETIC-NEUROPATHY-F.*
2. Maugh II, T. H., "Firm Hopes to Market New 'Memory' Drug," *The Los Angeles Times*, April 15, 1986. Retrieved from: *http://articles.latimes.com/1986-04-15/news/mn-4847_1_vinpocetine.*
3. Manconi, E., F. Binaghi, and F. Pitzus, "A Double-Blind Clinical Trial of Vinpocetine in the Treatment of Cerebral Insufficiency of Vascular and Degenerative Origin," *Current Therapeutic Research*, Vol. 40, No. 4, 1986.
4. The Pink Sheet, "American Home Products' 'Third Generation' TPA Entering Clinicals," March 21, 1988. Retrieved from: *https://pink.pharmamedtechbi.com/PS013359/AMERICAN-HOME-PRODUCTS-THIRD-GENERATION-TPA-ENTERING-CLINICALS.*
5. National Toxicology Program, U.S. Dept. of Health and Human Services, "Chemical Information Review Document for Vinpocetine [CAS No. 42971–09–5]." Retrieved from: *http://ntp.niehs.nih.gov/ntp/htdocs/chem_background/exsumpdf/vinpocetine091613_508.pdf.*
6. Y. Kuge, H. Nakazawa, T. Kometani, et al., "A Facile One-Pot Synthesis of Vinpocetine," *Synthetic Communications:*

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[4] We acknowledged receipt of each of those new dietary ingredient notifications without objection.

An Internal Journal for Rapid Communication of Synthetic Organic Chemistry, vol. 24, no. 6, 1994.

7. U.S. Patent and Trademark Office, "Process of Preparation of Vincamine from Tabersonine." Retrieved from: *http://www.google.com/patents/US3892755.*

Dated: *August 31, 2016.*

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–21350 Filed 9–6–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–0990–new–60D]

Agency Information Collection Activities; Proposed Collection; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, announces plans to submit a new Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, OS seeks comments from the public regarding the burden estimate below or any other aspect of the ICR. Prior to submitting the ICR to OMB, OS seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on the ICR must be received on or before [November 7, 2016].

ADDRESSES: Submit your comments to *Information.CollectionClearance@hhs.gov* or by calling (202) 690–6162.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the document identifier HHS–OS–0990–new–60D for reference.

Information Collection Request Title: National Tissue Recovery through Utilization Survey.

Abstract: Office of HIV/AIDS and Infectious Disease Policy, Office of the Assistant Secretary for Health, requesting the Office of Management and Budget (OMB) approval on a new (ICR). This survey is being conducted to generate national estimates of recovery through utilization activity; of donated human tissue for calendar years 2012 and 2015, and to compare metrics across three data collection periods that includes results from a 2007 survey, the most recent year these data were collected. The survey and data collection and analysis methods will be similar to the 2007 survey. The general categories of information to be collected are listed under the Survey Section of the Annualized Burden Hour table below. Policy advice provided by the HHS Advisory Committee on Blood and Tissue Safety and Availability to the HHS Secretary and Assistant Secretary for Health is used to direct departmental efforts to address transfusion and transplantation issues; such as emergency preparedness and infectious disease transmission related to donated human tissue.

Likely Respondents: Respondents for this survey would be U.S. tissue banks that screen and recover tissue from living and deceased donors, and process, store, and/or distribute tissues grafts for transplantation from these donors.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Survey section	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Tissue bank activities, tissue types handled, and inspections.	All tissue banks	110	5	5/60	46
Referrals, authorization, and informed consent; tissue recovery and acquisition.	Tissue banks that handle referrals, Recover/acquire tissue.	80	36	30/60	1440
Tissue processing	Tissue banks that process tissue	35	17	30/60	298
Tissue storage	Tissue banks that store tissue	65	4	10/60	5
Tissue distribution	Tissue banks that distribute tissue	58	16	15/60	232
Communicable disease testing and adverse outcome reports.	Tissue banks that have donor infectious disease testing performed and may handle adverse outcome reports.	35	4	30/60	70
Total					2091

OS specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Terry S. Clark,

Asst Information Collection Clearance Officer.

[FR Doc. 2016–21360 Filed 9–6–16; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Notice of Office of Urban Indian Health Programs Strategic Plan

AGENCY: Indian Health Service, Department of Health and Human Services.

ACTION: Notice and request for comments.

SUMMARY: Indian Health Service (IHS) has entered into a contract with the National Academy of Public Administration (the Academy) to assist in the development of a five-year strategic plan. Funding for this project was provided by Congress in the 2016 Consolidated Appropriations Act, which directs IHS to develop the plan in consultation with urban Indians and the Academy.

As part of this project, the Academy project team is in the process of conducting extensive outreach to IHS/Office of Urban Indian Health Programs (OUIHP) leadership and employees, as well as conferring with urban Indian organizations and other key external stakeholder groups. The final product will be a strategic plan to guide the work of the headquarters office of OUIHP, area urban coordinators, and urban Indian organizations participating in IHS programs. The strategic plan will be completed by the end of December 2016.

IHS is requesting input on the strategic planning process, the strengths and weaknesses of OUIHP, and the opportunities and threats facing the program. Comments will be used to help develop the mission, goals, objectives, and strategies to be included in the strategic plan.

DATES: Submit your input to the Academy no later than September 16, 2016. All comments submitted to the Academy are not for attribution.

Written Comments: Send input by email to *UIOconfer@napawash.org* with the subject line: UIHP Strategic Plan.

FOR FURTHER INFORMATION CONTACT: Pamela Haze, Project Director, National Academy of Public Administration, 1600 K St. NW., Suite 400, Washington, DC 20006, (201) 204–3682.

Dated: August 26, 2016.

Elizabeth A. Fowler,

Deputy Director for Management Operations, Indian Health Service.

[FR Doc. 2016–21485 Filed 9–6–16; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive Patent License: The Development of an Anti-CD19 Chimeric Antigen Receptor (CAR) for the Treatment of Human Cancers

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This notice, in accordance with 35 U.S.C. 209 and 37 CFR part 404, that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in the following Patents and Patent Applications and all continuing U.S. and foreign patents/patent applications to Sangamo BioSciences, Inc. located in Richmond, California, USA:

Intellectual Property

U.S. Provisional Patent Application 62/006,313, filed 2 June 2014 and entitled "Chimeric Antigen Receptors Targeting CD–19" [HHS Ref. E–042–2014/0–US–01]; and PCT Patent Application PCT/US2015/033473, filed 1 June 2015 and entitled "Chimeric Antigen Receptors Targeting CD–19" [HHS Ref. E–042–2014/0–PCT–02].

The patent rights in these inventions have been assigned and/or exclusively licensed to the Government of the United States of America.

The prospective exclusive license territory may be worldwide and the field of use may be limited to the use of Licensed Patent Rights for the following: "The integration of a monospecific anti-CD19 chimeric antigen receptor (CAR) into genome-edited, allogeneic T cells (where the donor and recipient are different), where the monospecific CAR has at least: (a) The complementary determining region (CDR) sequences of the anti-CD19 47G4 antibody; and (b) a T cell signaling domain, for the prophylaxis and treatment of CD19-positive malignancies."

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before September 22, 2016 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: David A. Lambertson, Ph.D., Senior Licensing and Patenting Manager, National Cancer Institute, 9609 Medical Center Drive, Rm. 1–E530 MSC9702, Rockville, MD 20850–9702, Email: *david.lambertson@nih.gov.*

SUPPLEMENTARY INFORMATION: This invention concerns an anti-CD19 chimeric antigen receptor (CAR) and methods of using the CAR for the treatment of CD19-expressing cancers, including B cell malignancies. With regard to the proposed license, the CAR covered by the invention will be integrated into a genome-edited allogeneic (where the donor and recipient of the T cell are different individuals) T cell, and the resulting anti-CD19 CAR-expressing genome-edited allogeneic T cell will be introduced into a cancer patient to exhibit a therapeutic effect. CD19 is a cell surface antigen that is preferentially expressed on certain types of cancer cells, particularly cancers of B cell origin such as Non-Hodgkin's Leukemia (NHL), acute lymphoblastic leukemia (ALL) and chronic lymphocytic leukemia (CLL). The anti-CD19 CARs of this technology contain (1) antigen recognition sequences that bind specifically to CD19 and (2) signaling domains that can activate the cytotoxic functions of a T cell. The anti-CD19 CAR can be integrated into genome-edited allogeneic T cells; from there, genome-edited allogeneic T cells expressing the anti-CD19 CAR are selected, expanded and then introduced into a patient. Once the anti-CD19 CAR-expressing genome-edited allogeneic T cells are introduced into the patient, the T cells can selectively bind to CD19-expressing cancer cells through its antigen recognition sequences, thereby activating the T cell through its signaling domains to selectively kill the cancer cells. Through this mechanism of action, the selectivity of the a CAR allows the T cells to kill cancer cells while leaving healthy, essential cells unharmed. This can result in an effective therapeutic strategy with fewer side effects due to less non-specific killing of cells.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404.7. The prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.7.

Complete applications for a license in the prospective field of use that are filed in response to this notice will be treated as objections to the grant of the contemplated Exclusive Patent License Agreement. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the *Freedom of Information Act,* 5 U.S.C. 552.

Dated: August 31, 2016.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2016–21366 Filed 9–6–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Obstetrics and Maternal-Fetal Biology Subcommittee; Obstetrics and Maternal-Fetal Biology.

Date: October 18, 2016.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter Zelazowski, Ph.D., Scientific Review Officer, National Institutes of Health, NICHD, SRB, 6710B Rockledge Drive, Bethesda, MD 20892, 301–435–6902, *Peter.zelazowski@nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Reproduction, Andrology, and Gynecology Subcommittee.

Date: October 21, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Dennis E. Leszczynski, PH.D., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, (301) 435–2717, *leszczyd@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: August 31, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–21363 Filed 9–6–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; A Review of Proposals for Medical Devices for Congenital Heart Defects.

Date: September 29, 2016.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Stephanie J Webb, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892, 301–435–0291, *stephanie.webb@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: August 31, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–21365 Filed 9–6–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Gene-Environmental Pathways for Obesity Prevention.

Date: October 18, 2016.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6710B Rockledge Drive Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Priscah Mujuru, DRPH, COHNS, Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Suite 5B01, Bethesda, MD 20892–7510, 301–435–6908, *mujurup@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Developmental Consequences of Birth Interventions SUPPLEMENT.

Date: November 29, 2016.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6710B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Peter Zelazowski, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6710B Rockledge Drive, Bethesda, MD 20892–7510, 301–435–6902, *peter.zelazowski@nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Assessing Human Placental Development and Function Using Existing Data.

Date: December 1, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Peter Zelazowski, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6710B Rockledge Drive, Bethesda, MD 20892–7510, 301–435–6902, *peter.zelazowski@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: August 31, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–21364 Filed 9–6–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Project: Uniform Application for the Community Mental Health Services Block Grant and Substance Abuse and Prevention Treatment Block Grant FY 2016–2017 Application Guidance and Instructions (OMB No. 0930–0168)—NEW

The Substance Abuse and Mental Health Services Administration (SAMHSA) is requesting an approval from the Office of Management and Budget (OMB) for an amendment to the FY 2016–2017 Uniform Application, Section III. Behavioral Health Assessment and Plan, C. Environmental Factors and Plan. The intent of this amendment is to gather information regarding the states' and jurisdictions' plans to implement elements of a syringe services program at 1 or more community-based organizations that receive amounts from the grant to provide substance use disorder treatment and recovery services to persons who inject drugs. In response to the emergence of prescription drug and heroin overdoses and associated deaths in many states and jurisdictions, SAMHSA issued guidance on April 2, 2014, to the states and jurisdictions regarding the use of SABG funds for prevention education and training regarding overdoses and the purchase of naloxone (Narcan®) and related materials to assemble overdose prevention kits.

Respondents are the 50 states and the jurisdictions (District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, American Samoa, Commonwealth of Northern Mariana Islands, Federated States of Micronesia, Guam, Republic of Marshall Islands, Republic of Palau, and the Red Lake Band of Chippewa Indians of Minnesota).

The following reporting burden is based on estimates developed considering the State substance abuse and mental health authorities responsible for these activities and represents the average total hours to assemble, format, and produce the requested information.

Respondents	Number of respondents	Response per respondent	Total responses	Total burden	Hourly wage cost	Total hour cost
States and Jurisdictions.	60	1	60	40 hours per State (1500 hours)	$45.00	$1800 per state/ jurisdiction ($108,000 Total).

Link for the application: *http://www.samhsa.gov/grants/blockgrant/.*

Send comments to Summer King, SAMHSA Reports Clearance Officer, 5600 Fishers Lane, Room 15E57–B, Rockville, Maryland 20857, *OR* email a copy to *summer.king@samhsa.hhs.gov.* Written comments should be received by November 7, 2016.

Summer King,

Statistician.

[FR Doc. 2016–21395 Filed 9–6–16; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0819]

Commercial Fishing Safety Advisory Committee

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Commercial Fishing Safety Advisory Committee will meet in Savannah, Georgia to discuss various issues relating to safety in the commercial fishing industry. This meeting will be open to the public.

DATES: The Committee will meet on Tuesday, September 27, Wednesday September 28, and Thursday September 29, 2016 from 8 a.m. to 5:30 p.m. However, on Tuesday September 27 from 8 a.m. to 10 a.m., administrative items and issues will be discussed with Committee members only. The public meeting will commence at 10 a.m. The meeting may close early if all business is finished.

ADDRESSES: The Committee will meet at the United States Federal Building located at 124 Barnard Street, Savannah, Georgia, 31401 in Conference Room #1.

If you are planning to attend the meeting, you will be required to pass through a security checkpoint. You will be required to show valid government identification. Please arrive at least 30 minutes before the planned start of the meeting in order to pass through security.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section, as soon as possible.

Instructions: To facilitate public participation, we are inviting public comment on the issues to be considered by the Committee as listed in the "Agenda" section below. Written comments must be submitted no later than September 9, 2016 if you want Committee members to be able to review your comments before the meeting. You must include "Department of Homeland Security" and the docket number USCG–2016–0819. Written comments may be submitted using Federal Electronic Rulemaking Portal at *http://www.regulations.gov.* For assistance with technical difficulties, contact the individual in the **FOR FURTHER INFORMATION CONTACT** section of this document. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005 issue of the **Federal Register** (70 FR 15086).

Docket Search: For access to the docket to read documents or comments related to this notice, go to *http://www.regulations.gov,* enter the docket number in the "SEARCH" box, press Enter and then click on the item you wish to view.

Public oral comment periods will be held during the meeting after each presentation and at the end of each day. Speakers are requested to limit their comments to 3 minutes. Please note that the public oral comment periods may end before the prescribed ending time following the last call for comments. Contact Mr. Jack Kemerer as indicated below to register as a speaker.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Kemerer, Alternate Designated Federal Officer for the Commercial Fishing Safety Advisory Committee, Commandant (CG–CVC–3), United States Coast Guard Headquarters, 2703 Martin Luther King Junior Avenue, South East, Mail Stop 7501, Washington, DC 20593–7501; telephone 202–372–1249, facsimile 202–372–8385, electronic mail: *jack.a.kemerer@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is in compliance with the Federal Advisory Committee Act, Title 5 U.S.C., Appendix.

The Commercial Fishing Safety Advisory Committee is authorized by Title 46 United States Code Section 4508. The Committee's purpose is to provide advice and recommendations to the United States Coast Guard and the Department of Homeland Security on matters relating to the safe operation of commercial fishing industry vessels.

A copy of available meeting documentation will be posted to the docket, as noted above, and at *http://fishsafe.info/* by September 9, 2016. Post-meeting documentation will be posted to the Web site, noted above, within 30 days after the meeting, or as soon as possible. Alternatively, you may contact Mr. Jack Kemerer as noted in the **FOR FURTHER INFORMATION CONTACT** section above.

Agenda

The Commercial Fishing Safety Advisory Committee will meet to review, discuss and formulate recommendations on topics contained in the agenda.

Day 1

The meeting will include administrative matters, reports, presentations, discussions, as follows:

(1) 8 a.m. to 10 a.m. Committee Members Only. Federal Advisory Committee Act administrative matters to include Commercial Fishing Safety Committee member training.

(2) 10 a.m. Open to the Public. Introductions, swearing-in of new members, election of Chair and Vice-Chair.

(3) Status of Commercial Fishing Vessel Safety Rulemaking projects resulting from requirements set forth in the Coast Guard Authorization Act of 2010 and the Coast Guard and Maritime Transportation Act of 2012.

(4) Coast Guard District Commercial Fishing Vessel Safety Coordinator reports on activities and initiatives.

(5) Updates on safety and survival equipment developments by Committee member and any industry representatives present.

(6) Presentation and discussion on casualties, by regions and fisheries, and an update on safety and risk-reduction-related projects by the National Institute for Occupational Safety and Health.

(7) Presentation and discussion on E-charts, Automatic Identification Systems, and Digital Selective Calling by the United States Coast Guard Navigation Office.

(8) Public Comment Period.

(9) Adjournment of meeting.

Day 2

The meeting will include a review and discussion of the United States Coast Guard Notice of Proposed Rulemaking (46 CFR part 28, Commercial Fishing Vessels—Implementation of 2010 and 2012 Legislation) published in the **Federal Register** on June 21, 2016 but will primarily be dedicated to Subcommittee/working group sessions, on the following topics:

(1) Development of an Enhanced Oversight Program as outlined in Coast Guard Marine Safety Information Bulletin 11–16 dated July 20, 2016.

(2) Development of guidance to ensure compliance with construction standards for vessels 50–79 feet under Title 46 U.S.C section 4503(c)(2).

(3) Goals and objectives for operator competency training as set forth in Title 46 United States Code section 4502.

(4) Status Reports from Subcommittee Chairs to full Committee.

(5) Public Comment Period.

(6) Adjournment of meeting.

Day 3

The meeting will include Subcommittee/working group discussions, reports and recommendations as follows:

(1) Subcommittee/working groups meet.

(2) Subcommittee/working groups report to full Committee and make recommendations.

(3) There will be a comment period for Commercial Fishing Safety Advisory Committee members and a comment period for the public after each report and discussion. The Committee will review the information presented on any issues, deliberate on any recommendations presented in Subcommittee reports, and formulate recommendations for the Department's consideration.

(4) Future plans and goals for the Committee.

(5) Next Committee meeting, plans and recommended location.

(6) Comments on the meeting from Committee members.

(7) Adjournment of meeting.

Dated: August 31, 2016.

J.F. Williams,

Captain, U.S. Coast Guard, Acting Director of Inspections and Compliance.

[FR Doc. 2016–21479 Filed 9–6–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0022]

Technical Mapping Advisory Council

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Committee Management; notice of rescheduled Federal Advisory Committee meeting.

SUMMARY: The Federal Emergency Management Agency (FEMA) Technical Mapping Advisory Council (TMAC) teleconference meeting scheduled for September 13 and 14, 2016 is rescheduled for September 23 and 26, 2016. FEMA previously published a notice announcing this meeting in the **Federal Register** on July 27, 2016 at 81 FR 49235.

DATES: The rescheduled TMAC meeting will be held on Friday, September 23, 2016, from 10:00 a.m. to 5:00 p.m. Eastern Daylight Time (EDT) and on Monday, September 26 from 10:00 a.m. to 5:00 p.m. Eastern Daylight Time (EDT).

ADDRESSES: The rescheduled TMAC meeting will be held via conference call.

Written comments concerning this rescheduled TMAC meeting may be submitted by one of the following methods and should be identified by Docket ID FEMA–2014–0022.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email:* Address the email TO: *FEMA–RULES@fema.dhs.gov* and CC: *FEMA–TMAC@fema.dhs.gov.* Include the docket number in the subject line of the message. Include name and contact detail in the body of the email.
- *Mail:* Regulatory Affairs Division, Office of Chief Counsel, FEMA, 500 C Street SW., Room 8NE, Washington, DC 20472–3100.

Instructions: All submissions received must include the words "Federal Emergency Management Agency" and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read comments received by the TMAC, go to *http://www.regulations.gov,* and search for the Docket ID FEMA–2014–0022.

FOR FURTHER INFORMATION CONTACT: Kathleen Boyer, Designated Federal Officer for the TMAC, FEMA, 500 C St SW., Washington, DC 20024, telephone (202) 646–4023, and email *kathleen.boyer@fema.dhs.gov.* The TMAC Web site is: *http://www.fema.gov/TMAC.*

Dated: August 26, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Federal Emergency Management Agency.

[FR Doc. 2016–21376 Filed 9–6–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4273–DR; Docket ID FEMA–2016–0001]

West Virginia; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for State of West Virginia (FEMA–4273–DR), dated June 25, 2016, and related determinations.

EFFECTIVE DATE: August 26, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, William C. Watrel, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Albert Lewis as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–21372 Filed 9–6–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5909–N–66]

30-Day Notice of Proposed Information Collection: Application and Recertification Packages for Approval of Nonprofit Organizations in FHA Activities

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* October 7, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on June 21, 2016 at 81 FR 40340.

A. Overview of Information Collection

Title of Information Collection: Application and Recertification Packages for Approval of Nonprofit Organizations in FHA Activities.

OMB Approval Number: 2502–0540.

Type of Request: Extension without change of a currently approved collection.

Form Number: None.

Description of the need for the information and proposed use: In order for nonprofit organizations to participate in FHA Nonprofit and Government Entity Programs they must submit an application and be approved by FHA. The FHA Nonprofit programs include: HUD Homes where a nonprofit may be able to buy a FHA REO property at the discount; FHA Mortgagor where a nonprofit can qualify for an FHA insured loan; and Secondary Financing where a nonprofit can provide financial assistance to low to-moderate- income family in the purchase of a home. Once a Nonprofit submits and application that is approved, the Nonprofit is placed on the FHA Nonprofit Organization Roster. The Nonprofit must recertify every two years and maintain documentation for reporting purposes and to permit FHA to monitor their activities to ensure compliance with program requirements.

Respondents: Nonprofit Organizations.

Estimated Number of Respondents: 395.

Estimated Number of Responses: 731.

Frequency of Response: 1 to 4.

Average Hours per Response: 24.25.

Total Estimated Burdens: 8692.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: September 1, 2016.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2016–21482 Filed 9–6–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5875–N–01]

Single Family Mortgage Insurance: Revision of Section 203(k) Consultant Fee Schedule—Solicitation of Comment

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice; solicitation of comment.

SUMMARY: The Section 203(k) Program is HUD's primary program for the rehabilitation and repair of single family properties. The Section 203(k) mortgage program enables homebuyers and homeowners to finance the purchase, or refinance of a home and include the rehabilitation costs through a single mortgage. There are two types of 203(k) rehabilitation mortgages: Standard 203(k) and Limited 203(k).

The Standard 203(k) mortgage may be used for remodeling, rehabilitation and repairs that may have structural components, involve more complex work and the total rehabilitation costs must be greater than $5,000. The Limited 203(k) mortgage may only be used for minor remodeling and non-structural repairs. The total rehabilitation cost may not exceed $35,000 and there is no minimum cost.

As part of the Section 203(k) program requirements, the Federal Housing Administration (FHA) maintains a list of approved 203(k) Consultants on the FHA 203(k) Consultant Roster in FHA Connection. An FHA-approved 203(k) Consultant is required for all Standard 203(k) mortgages. A 203(k) Consultant is not required under the Limited 203(k) program, but may be used. FHA-approved 203(k) Consultants are required to perform responsibilities during the processing and rehabilitation phase of the 203(k) program. FHA-approved 203(k) Consultants who are placed on FHA's 203(k) Consultant Roster are deemed qualified to complete these duties and therefore permitted to collect a fee for this service. In 1995, HUD issued its current Section 203(k) Consultant Fee Schedule and now seeks to update the Section 203(k) Fee Schedule to align with similarly performed services and the corresponding fees collected for such services. As a result, this notice seeks public comment on revising the current structure of the fee and the maximum amount of fees a 203(k) Consultant would be permitted to charge on a Section 203(k) mortgage.

DATES: *Comment Due Date:* November 7, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov*. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the notice.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 1–800–877–8339 (this is a toll-free number). Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kevin L. Stevens, Director, Home Mortgage Insurance Division, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 9266, Washington, DC 20410–9000, telephone number 202–402–4137 (this is not a toll-free number). Persons with hearing or speech impairments may access this number by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 203(k) of the National Housing Act (12 U.S.C. 1709(k)) authorizes HUD to insure a purchase or a refinance mortgage on an existing 1–4 unit single family structure and include the rehabilitation costs through a single mortgage. The Section 203(k) Program is HUD's primary program for the rehabilitation and repair of single family properties. The Section 203(k) program is important for neighborhood revitalization and homeownership opportunities. The regulations implementing the Section 203(k) Program are codified at 24 CFR 203.50.

The Section 203(k) Program fills a unique and important role for homebuyers. In the conventional loan market, a homebuyer who purchases a home that is in need of repair or modernization usually has to follow a complicated and costly process. The homebuyer must obtain financing to purchase the dwelling, additional financing for the rehabilitation work, and a permanent mortgage after rehabilitation is completed to pay off the interim loans. The interim acquisition and improvement loans often have relatively high interest rates and short repayment terms. The Section 203(k) Program addresses this by permitting a homebuyer to obtain a single loan, at a long-term fixed or variable rate, to finance both the acquisition and rehabilitation of the property.

There are two types of 203(k) rehabilitation mortgages: Standard 203(k) and Limited 203(k). The Standard 203(k) mortgage may be used for remodeling, rehabilitation and repairs that may have structural components involve complex work and must have a total rehabilitation costs greater than $5,000. The Limited 203(k) mortgage may only be used for minor remodeling and non-structural repairs, the total rehabilitation cost may not exceed $35,000 and there is no minimum rehabilitation cost.

The extent of the rehabilitation covered by the Section 203(k) mortgage may range from relatively minor to virtual reconstruction. For example, a home that will be demolished as part of rehabilitation is eligible, provided that the existing foundation remains in place. In addition to typical home rehabilitation projects, the Section 203(k) Program can be used to convert a property of any size to a one- to four-unit dwelling. Section 203(k) mortgage insurance can also be used to augment Energy Efficient Mortgages, Section 203(h) Mortgage Insurance for Victims of a Presidentially-Declared Major Disaster Area, and Mortgage Insurance for Solar and Wind Technologies. All improvements, renovations, or repairs undertaken with Section 203(k) mortgage insurance must comply with the HUD Minimum Property Requirements, HUD Minimum Property Standards and all local codes and ordinances.

II. Section 203(k) Consultants

An FHA-approved 203(k) Consultant is required for all Standard 203(k) mortgages and may be used for Limited 203(k) mortgages. As part of the Section 203(k) program requirements, the Federal Housing Administration (FHA) maintains a list of approved 203(k) Consultants on the FHA 203(k) Consultant Roster from which the Mortgagee must select a 203(k) Consultant and assign the 203(k) Consultant to the transaction, if required.

When a Section 203(k) Consultant is required, the Consultant will enter into a written agreement with the Borrower that outlines the services that the Consultant will perform. In some cases, the Mortgagee or Borrower may require the Consultant to conduct a Feasibility Study to determine if the 203(k) mortgage is achievable, based on the costs of the rehabilitation project. The 203(k) Consultant conducts a Feasibility Study by completing a preliminary inspection of the property, and estimates the material and labor costs for the project.

The 203(k) Consultant must inspect the property to ensure:

- There are no rodents, dry rot, termites and other infestation the property;
- there are no defects that will affect the health and safety of the occupants;
- there exists adequate structural, heating, plumbing, electrical and roofing systems; and
- there are upgrades to the structure's thermal proportion (when necessary).

The Consultant must prepare a report on the current condition of the property that categorically examines the structure utilizing a 35 point checklist. The Consultant must determine the repairs/improvements that are required to meet the U.S. Department of Housing and Urban Development (HUD's) Minimum Property Requirements, Minimum Property Standards and local requirements. The report must address any deficiencies that exist. The Consultant is responsible for identifying all required architectural exhibits. The Consultant must prepare the exhibits, or, if not qualified to prepare all of the necessary exhibits, must obtain the exhibits from a qualified subcontractor.

The Consultant must prepare an unbiased Work Write-up and Cost Estimate without using a contractor's estimate. The Work Write-Up and Cost Estimate must be detailed as to the work being performed based on the project proposal, including all required reports.

The Consultant must physically inspect the work for completion, quality of workmanship, conformity to local codes and ordinances, and ensure that all building permits are onsite for the work that was performed at each draw request.

At the Borrower's or Mortgagee's request, the Consultant must review proposed changes to the Work Write-Up and prepare a Change Order Form HUD–95277. The Consultant must inform the Mortgagee of the progress of the rehabilitation and of any problems that arise, including:

- Work stoppages for more than 30 consecutive days or work not progressing;
- significant deviations from the Work Write-Up without the Consultant's approval;
- any issues that could affect adherence to the program requirements or property eligibility; or
- any issues that could affect the health and safety of the occupants or the security of the structure.

The Borrower is responsible for the fee charged by the Section 203(k) Consultant. Under the Standard 203(k) program, the Consultant fee charged for the Feasibility Study, Work Write-Up, Mileage (not associated with a Draw inspection) and Architectural Exhibit preparation, may be included in the mortgage as a part of the cost of rehabilitation.

III. Section 203(k) Consultants Fee Schedule

Under the existing structure, the fee is based on a range of repair costs, recognizing that more extensive repairs would require more time and are costlier for the Consultant to complete. It also allows for some level of change over time as repair costs increase. HUD establishes and monitors the maximum fees that a Section 203(k) Consultant may charge a Borrower to prepare the Work Write-Up for repairs associated with the Section 203(k) mortgage. The Work Write-Up includes the initial inspection, Architectural Exhibit Review and Cost Estimate. The current fee schedule, which HUD issued in 1995, is as follows:

Maximum consultant fee	Cost of repairs	Maximum amount that can be financed
203(k) Consultant Fee Schedule for preparing the Work Write-up		
$400	Less than $7,500	$400
$500	Between $7,501 and $15,000	500
$600	Between $15,001 and $30,000	600
$700	Between $30,001 and $50,000	700
$800	Between $50,001 and $75,000	800
$900	Between $75,001 and $100,000	900
$1,000	Above $100,000	1,000
Plus an additional $25 for each additional Dwelling Unit, not to exceed $75		
The 203(k) Roster Consultant may charge a fee for additional services listed below		
$100	Feasibility Study (if one is performed)	100
$100	For Preparing a Change Order Request	100
$50	For each Re-Inspection requested	50

The 203(k) Roster Consultant may also charge a reasonable and customary fee, not to exceed $350 for each draw inspection request plus mileage at the current Internal Revenue Service mileage rate when the place of business is more than 15 miles from the property.

HUD has determined that the existing fee structure may discourage Consultant participation in the Section 203(k) Program and has the potential to limit access to credit. Between 2012 and 2015, the volume of loans requiring the use of a Consultant fell from 6,753 to 5,359. Based on the first two quarters of 2016, the projected volume of loans requiring the use of a Consultant is 5,132, while the projected volume of loans not requiring the use of a Consultant is 14,224. This data suggests that Borrowers are choosing the less complicated repair work, not requiring a Consultant. HUD believes that establishing a fee structure that is more in alignment with market rates would increase Consultants' participation in the Section 203(k) program and expand access to credit by encouraging and enabling more Borrowers to purchase properties that require substantial rehabilitation. The willingness and ability of Borrowers to purchase properties involving substantial rehabilitation would contribute to the reduction in build-up of HUD's Real Estate Owned inventories, result in an increase in energy efficient homes and assist in the stabilization of the housing market.

As part of its policy consolidation effort, HUD posted on the Single Family Housing Policy Drafting Table[1] its draft 203(k) Consultant Product Sheet section of the Single Family Policy Handbook 4000.1 and requested comments.[2] The feedback that HUD received was that the fee schedule is not in alignment with current market rates and needs to be revised. Most commenters stated that the fee schedule was out-of-date and did not reflect the current cost of business. For example, some commenters stated that Consultants are dealing with issues like mold, radon, and other environmental hazards that were not widely recognized as issues in 1995 when HUD issued the current fee schedule. In addition, the feedback questioned the structure of the current fee schedule. For example, one commenter stated that the Consultant is limited to charging the same fee whether the home is 4,100 square feet with a crawlspace or 1,200 square feet on a slab.

IV. Request for Public Comments on Updating the Section 203(k) Consultant Fee Schedule

In order to better inform HUD, this notice seeks public comment on ways to revise the fee schedule for 203(k) Consultants. HUD is specifically seeking information to determine whether Consultant fees should continue to be based on the total cost of repairs or on some other metric. While all comments on updating the Consultant fee schedule are welcome, HUD is soliciting specific comments on the following options:

1. *Retain the current fee structure but update maximum fees.* Under this option, HUD would continue to base Consultant fees on the total cost of repairs and continue to allow Borrowers the ability to finance all fees into the 203(k) mortgage. If HUD uses this option, should it continue to use the current ranges for cost of repair, and if not, how should HUD set these thresholds and why? What should be the maximum Consultant fee at each threshold and why? Should the fees be tied to Consumer Price Index to account for regional differences in the cost of services?

2. *Allow Consultants to charge fees that are reasonable and customary.* Under this option, Consultants would be allowed to charge fees that are reasonable and customary in the market

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[1] See, *http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/SFH_policy_drafts.*

[2] See, *http://portal.hud.gov/hudportal/documents/huddoc?id=SFH_POLI_203K_CSL.PDF.*

for similar work performed by professionals with similar qualifications. If HUD uses this option, how can it manage risk associated with this concept? Should HUD continue to permit all fees to be financed or should it establish a maximum amount that can be financed in the 203(k) loan? If HUD uses this option what should be used to establish the financeable portion of the fee? Would requiring the Borrower to pay the excess fees adversely limit the number of Section 203(k) loan origination? Would this method of setting fees lead to an increase in the number of loans with negative equity? Would this method of setting fees lead to an increase in the number of loans with negative equity and how could HUD protect against this?

3. *Develop a different metric on which to base Consultant fees.* Under this option, Consultants' fees would be based on a metric other than cost of repairs. For example, HUD could set fees based on a straight percentage of the repair amount or a fixed fee plus a percentage of the repair amount. If HUD uses this option, at what level should HUD set the amount? Would this option allow for regional differences in the cost of services or in the variation and complexity of services provided in a specific loan transaction? Are there other metrics upon which HUD could base Consultant fees? If so, what are the pros and cons of each metric?

4. *Index Section 203(k) Consultant fees to another measure.* Under this option, Consultant fees could be tied to Consumer Price Index or the Annual Rate of Inflation. HUD could then revise the fees under such measure and alert the public by Mortgagee Letter or Handbook publication. What are the pros and cons of tying the 203(k) Consultant fee schedule to either of these two measures? Are there other measures that would more accurately establish maximum fees? Would there be any reason for HUD to establish a maximum amount of the fee that can be financed into the 203(k) mortgage using either of these measures?

Dated: August 26, 2016.

Edward L. Golding,

Principal Deputy Assistant Secretary for Housing.

[FR Doc. 2016–21226 Filed 9–6–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5909–N–67]

30-Day Notice of Proposed Information Collection: ConnectHome Use and Benefits Telephone Survey

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* October 7, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Anna P. Guido at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on February 4, 2016 at 81 FR 6036.

A. Overview of Information Collection

Title of Information Collection: ConnectHome Use and Benefits Telephone Survey.

OMB Approval Number: 2528–New.

Type of Request: New collection.

Form Number: Survey.

Description of the need for the information and proposed use: President Barack Obama and Secretary Julián Castro announced ConnectHome on July 15, 2015, as the next step in the Obama Administration's efforts to increase access to high-speed Internet access for all Americans. Through public-private partnerships, nonprofits, businesses, and Internet service providers (ISPs) ConnectHome will offer high-speed Internet service, devices, technical training, and digital literacy programs to residents of HUD assisted housing in 28 pilot communities, including the Choctaw Nation of Oklahoma.

As communities begin to implement ConnectHome in 2016 and connect residents to internet within their homes, this telephone survey will illuminate how families are taking advantage of ConnectHome. The telephone survey will explore ConnectHome subscribers' previous broadband access, current and planned use patterns, and current and anticipated benefits of their at-home high-speed Internet access. The survey will particularly focus on educational Internet use such as completing homework, connecting parents with educators, and applying to college.

TABLE 1—DATA COLLECTION ACTIVITIES AND ANTICIPATED BURDEN

Information collection (instruments)	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Telephone Survey Instrument (Appendix B).	2,500	1	2,500	.33 (15–20 minutes).	825	$15.00	$12,375.00
Total Burden Hours	2,500	....	....	....	825	15.00	12,375.00

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of

the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: August 31, 2016.

Anna P. Guido,

Department Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. 2016–21480 Filed 9–6–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2016–N140; FXES11120200000–167–FF02ENEH00]

Receipt of an Incidental Take Permit Application for Participation in the Amended Oil and Gas Industry Conservation Plan for the American Burying Beetle in Oklahoma

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for public comments.

SUMMARY: Under the Endangered Species Act, as amended (Act), we, the U.S. Fish and Wildlife Service, invite the public to comment on an incidental take permit application for take of the federally listed American burying beetle resulting from activities associated with the geophysical exploration (seismic) and construction, maintenance, operation, repair, and decommissioning of oil and gas well field infrastructure within Oklahoma. If approved, the permit would be issued under the approved *Amended Oil and Gas Industry Conservation Plan Associated with Issuance of Endangered Species Act Section 10(a)(1)(B) Permits for the American Burying Beetle in Oklahoma* (ICP).

DATES: To ensure consideration, written comments must be received on or before October 7, 2016.

ADDRESSES: You may obtain copies of all documents and submit comments on the applicant's ITP application by one of the following methods. Please refer to the proposed permit number when requesting documents or submitting comments.

- ○ *U.S. Mail:* U.S. Fish and Wildlife Service, Division of Endangered Species—HCP Permits, P.O. Box 1306, Room 6034, Albuquerque, NM 87103.
- ○ *Electronically: fw2_hcp_permits@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Marty Tuegel, Branch Chief, by U.S. mail at: U.S. Fish and Wildlife Service, Environmental Review Division, P.O. Box 1306, Room 6034, Albuquerque, NM 87103; or by telephone at 505–248–6651.

SUPPLEMENTARY INFORMATION:

Introduction

Under the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.;* Act), we, the U.S. Fish and Wildlife Service, invite the public to comment on an incidental take permit (ITP) application for take of the federally listed American burying beetle (*Nicrophorus americanus*) resulting from activities associated with geophysical exploration (seismic) and construction, maintenance, operation, repair, and decommissioning of oil and gas well field infrastructure, as well as construction, maintenance, operation, repair, decommissioning, and reclamation of oil and gas gathering, transmission, and distribution pipeline infrastructure within Oklahoma. If approved, the permit would be issued to the applicant under the *Amended Oil and Gas Industry Conservation Plan Associated with Issuance of Endangered Species Act Section 10(a)(1)(B) Permits for the American Burying Beetle in Oklahoma* (ICP). The original ICP was approved on May 21, 2014 (publication of the FONSI notice was on July 25, 2014; 79 FR 43504). The draft amended ICP was made available for comment on March 8, 2016 (81 FR 12113), and approved on April 13, 2016. The ICP and the associated environmental assessment/finding of no significant impact are available on the Web site at *http://www.fws.gov/southwest/es/oklahoma/ABBICP.* However, we are no longer taking comments on these finalized, approved documents.

Applications Available for Review and Comment

We invite local, State, Tribal, and Federal agencies, and the public to comment on the following application under the ICP, for incidental take of the federally listed ABB. Please refer to the appropriate permit number (*e.g.,* TE–123456) when requesting application documents and when submitting comments. Documents and other information the applicants have submitted with this application are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

Permit TE04297C

Applicant: Rose Rock Midstream Crude, Limited Partnership, Tulsa, OK.

Applicant requests an amended permit for oil and gas upstream and midstream production, including geophysical exploration (seismic) and construction, maintenance, operation, repair, and decommissioning of oil and gas well field infrastructure, as well as construction, maintenance, operation, repair, decommissioning, and reclamation of oil and gas gathering, transmission, and distribution pipeline infrastructure within Oklahoma.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will not consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Joy E. Nicholopoulos,

Acting, Regional Director, Southwest Region.

[FR Doc. 2016–21408 Filed 9–6–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAC01000 L16600000.XZ0000 16XL1109AF LXSIOVHD0000]

Notice of Public Meeting of the Central California Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Central California Resource Advisory Council (RAC) will meet as indicated below.

DATES: A tour of tree mortality areas in the Mother Lode Field Office will be held from 8 a.m. to 1 p.m. on Thursday, Oct. 20, 2016, followed by a business meeting from 1 p.m. to 5 p.m. at the Mother Lode Field Office, 5152 Hillsdale Circle, El Dorado Hills, CA. Time for public comment is reserved from 2 p.m. to 3 p.m. The RAC will reconvene beginning at 8 a.m. on Friday, Oct 21, until business is concluded, no later than noon.

FOR FURTHER INFORMATION CONTACT: BLM Central California District Manager Este Stifel, (916) 978–4626; or BLM Public Affairs Officer David Christy, (916) 941–3146. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339, to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 12-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in the Central California District, which includes the Bishop, Bakersfield, Central Coast, Ukiah and Mother Lode Field Offices. The meeting will include consideration by the RAC of proposed campground fee increases for the Bishop Field Office. The RAC charter states:

Upon the request of the Designated Federal Official (DFO), the Council may make recommendations regarding a standard amenity recreation fee or an expanded recreation amenity fee, whenever the recommendations related to public concerns in the state or region covered by the council regarding:

(A) The implementation of a standard amenity recreation fee or an expanded amenity recreation fee or the establishment of a specific recreation fee site;

(B) The elimination of a standard amenity recreation fee or an expanded amenity recreation fee; or

(C) The expansion or limitation of the recreation fee program.

The Council may make these recommendations for the BLM when amenity recreation fees are at issue and it would facilitate implementation of the REA. With the concurrence of the Forest Service (FS) when their amenity recreation fees are at issue, the Council may also make these recommendations for BLM and/or FS if that would facilitate the effective implementation of the REA.

There will be a presentation on the fee proposal at 3 p.m. on Thursday, Oct. 20. Information on the proposed fee increase is available on the web at *http://www.blm.gov/ca/st/en/fo/bishop.html.*

Additional ongoing business will be discussed by the council. All meetings are open to the public. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. The meeting is open to the public. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Ruben Leal,

Associate District Manager.

[FR Doc. 2016–21407 Filed 9–6–16; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDC000000.16XL1109AF .L11200000.MR0000.241A.00; 4500096833]

Notice of Public Meeting, Coeur d'Alene District Resource Advisory Council, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA), the Federal Advisory Committee Act of 1972 (FACA), and the Federal Lands Recreation Enhancement Act of 2004 (FLREA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Coeur d'Alene District Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Coeur d'Alene District RAC will meet at the North Fork District Office of the Nez Perce/Clearwater National Forest located at 12730 Highway 12, Orofino, ID 83544. A business meeting will take place the afternoon of Tuesday, October 4, followed by a field tour of the Clearwater River Corridor on Wednesday, October 5. The business meeting will begin at 1:00 p.m. and end no later than 5:00 p.m. The public comment forum will take place from 3:30 p.m. until 4:00 p.m. The field tour will begin at 8:30 a.m. and conclude by 2:00 p.m.

FOR FURTHER INFORMATION CONTACT: Suzanne Endsley, Coeur d'Alene District, Idaho, 3815 Schreiber Way, Coeur d'Alene, Idaho, 83815, Telephone: (208) 769–5004. Email: *sendsley@blm.gov.*

SUPPLEMENTARY INFORMATION: The 15-member RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Idaho. The meeting agenda will include a review of proposed recreation fee increases on multiple sites on the Nez Perce/Clearwater Forest, information on BLM's Planning 2.0 process and updates on projects within the Cottonwood and Coeur d'Alene Field Offices. Additional agenda topics or changes to the agenda will be announced in local press releases. The field tour will include stops at sites along the Clearwater River managed by BLM and the Clearwater Management Council. More information is available at *http://www.blm.gov/id/st/en/get_involved/resource_advisory/coeur_d_alene_district.html.*

RAC meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the BLM as provided below.

Authority: 43 CFR 1784.4–1

Dated: August 29, 2016.

Linda Clark,

BLM Coeur d'Alene District Manager.

[FR Doc. 2016–21414 Filed 9–6–16; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRSS–15890; PPWONRADE2.PMP00EI05.YP0000]

Final Environmental Impact Statement Non-Federal Oil and Gas Regulations

AGENCY: National Park Service, Interior.

ACTION: Notice of availability, Final Environmental Impact Statement.

SUMMARY: The National Park Service (NPS) announces the availability of the Final Environmental Impact Statement (FEIS) for the Nonfederal Oil and Gas Regulations (36 CFR part 9, subpart B) Revisions.

DATES: September 7, 2016.

ADDRESSES: Copies of the FEIS will be available for public review at *http://parkplanning.nps.gov/FEIS9B.* A limited number of hard copies will be available upon request.

FOR FURTHER INFORMATION CONTACT: David Steensen, Chief, Geologic Resource Division, National Park Service, P.O. Box 25287, Denver, CO 80225; phone (303) 969–2014. The responsible official for this FEIS is the Associate Director, Natural Resource Stewardship and Science, 1849 C Street NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the FEIS evaluates the impacts of three alternatives, including the following alternative elements:

- Elimination of two regulatory provisions that exempt 60% of the oil and gas operations in System units. All operators in System units would be required to comply with the 9B regulations.
- Elimination of the financial assurance (bonding) cap. Financial assurance would be equal to the reasonable estimated cost of site reclamation.
- Improving enforcement authority by incorporating existing NPS penalty provisions. Law enforcement staff would have authority to write citations for noncompliance with the regulations.
- Authorizing compensation to the federal government for new access on federal lands and waters outside the boundary of an operator's mineral right.
- Reformatting the regulations to make it easier to identify an operator's information requirements and operating standards that apply to each type of operation.

Dated: August 30, 2016.

Raymond M. Sauvajot,

Associate Director, Natural Resource Stewardship and Science, Washington Office, National Park Service.

[FR Doc. 2016–21186 Filed 9–2–16; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NER–BOHA–21830; PPMPSPD1Z.YM0000] [PPNEBOHAS1]

Notice of September 19, 2016, Meeting of the Boston Harbor Islands National Recreation Area Advisory Council

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces the meeting of the Boston Harbor Islands National Recreation Area Advisory Council (Council). The agenda includes updates from Boston Harbor Now and the National Park Service as well as an informational session about the Federal Advisory Committee Act (FACA).

DATES: September 19, 2016, from 5:30 p.m. to 7:30 p.m. (Eastern).

ADDRESSES: New England Aquarium, Harborside Learning Lab, Central Wharf, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Giles Parker, Superintendent and Designated Federal Official (DFO), Boston Harbor Islands National Recreation Area, 15 State Street, Suite 1100, Boston, MA 02109, telephone (617) 223–8669, or email *giles_parker@nps.gov.*

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Those wishing to submit written comments may contact the DFO for the Council, Giles Parker, by mail at National Park Service, Boston Harbor Islands, 15 State Street, Suite 1100, Boston, MA 02109 or by email *giles_parker@nps.gov.* Before including your address, telephone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The Council was appointed by the Director of the National Park Service pursuant to 16 U.S.C. 460kkk(g). The purpose of the Council is to advise and make recommendations to the Boston Harbor Islands Partnership with respect to the implementation of a management plan and park operations. Efforts have been made locally to ensure that the interested public is aware of the meeting dates.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2016–21447 Filed 9–6–16; 8:45 am]

BILLING CODE 4310–EE–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0015]

Crawler, Locomotive, and Truck Cranes Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements contained in the Crawler, Locomotive, and Truck Cranes Standard (29 CFR 1910.180).

DATES: Comments must be submitted (postmarked, sent, or received) by November 7, 2016.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, OSHA Docket No. OSHA–2010–0015, Occupational Safety and health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of

Labor's and Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number (OSHA–2010–0015) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments, see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You also may contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act, or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The Standard specifies several paperwork requirements. The following sections describe who uses the information collected under each requirement, as well as how they use it. The purpose of each of these requirements is to prevent workers from using unsafe cranes and ropes, thereby reducing their risk of death or serious injury caused by a crane or rope failure during material handling.

(A) Inspection of and Certification Records for Cranes (§ 1910.180(d)(4) and (d)(6))

Paragraph 1910.180(d) specifies that employers must prepare a written record to certify that the monthly inspection of critical items in use on cranes (such as brakes, crane hooks, and ropes) has been performed. The certification record must include the inspection date, the signature of the person who conducted the inspection, and the serial number (or other identifier) of the inspected crane. Employers must keep the certificate readily available. The certification record provides employers, workers, and OSHA compliance officers with assurance that critical items on cranes have been inspected, and that the equipment is in good operating condition so that the crane and rope will not fail during material handling. These records also enable OSHA to determine that an employer is complying with the Standard.

(B) Rated Load Tests (§ 1910.180(e)(2))

This provision requires employers to make available written reports of load-rating tests showing test procedures and confirming the adequacy of repairs or alterations, and to make readily available any rerating test reports. These reports inform the employer, workers, and OSHA compliance officers of a crane's lifting limitations, and provide information to crane operators to prevent them from exceeding these limits and thereby causing crane failure.

(C) Inspection of and Certification Records for Ropes (§ 1910.180(g)(1) and (g)(2)(ii))

Paragraph (g)(1) requires employers to thoroughly inspect any rope in use at least once a month. The authorized person conducting the inspection must observe any deterioration resulting in appreciable loss of original strength and determine whether or not the condition is hazardous. Before reusing a rope that has not been used for at least a month because the crane housing the rope is shut down or in storage, paragraph (g)(2)(ii) specifies that employers must have an appointed or authorized person inspect the rope for all types of deterioration. Employers must prepare a certification record for the inspections required by paragraphs (g)(1) and (g)(2)(ii). These certification records must include the inspection date, the signature of the person conducting the inspection, and the identifier for the inspected rope; paragraph (g)(1) states that employers must keep the certificates "on file where readily available," while paragraph (g)(2)(ii) requires that certificates "be . . . kept readily available." The certification records assure employers, workers, and OSHA that the inspected ropes are in good condition.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

There are no adjustments or program changes associated with the information collection requirements in the standard. The Agency is requesting that it retain its previous estimate of 30,511 burden hours. Table I describes each of the requested burden hours.

Type of Review: Extension of a currently approved information collection.

Title: Crawler, Locomotive, and Truck Cranes (29 CFR 1910.180).

OMB Control Number: 1218–0221.

Affected Public: Business or other for-profits; Federal Government; State, Local, or Tribal government.

Number of Respondents: 34,994.

Frequency of Responses: On occasion; Monthly, Semi-annually.

Average Time per Response: Varies from 1 hour to conduct rated load tests to monthly to inspect ropes.

Estimated Total Burden Hours: 30,511.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for this ICR (Docket No. OSHA–2010–0015). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Due to security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this Web site.

All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available from the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on August 31, 2016.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2016–21398 Filed 9–6–16; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2016–047]

Records Management; General Records Schedule (GRS); GRS Transmittal 26

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of new General Records Schedule (GRS) Transmittal 26.

SUMMARY: NARA is issuing a new set of General Records Schedules (GRS) via GRS Transmittal 26. The GRS provides mandatory disposition instructions for administrative records common to several or all Federal agencies. Transmittal 26 announces changes we have made to the GRS since we published Transmittals 24 and 25 in August and September 2015. We are concurrently disseminating Transmittal 26 (the memo and the accompanying records schedules and documents) directly to each agency's records management official and have also posted it on NARA's Web site.

DATES: This transmittal is effective the date it publishes in the **Federal Register**.

ADDRESSES: You can find this transmittal on NARA's Web site at *http://www.archives.gov/records-mgmt/grs/.* You can download the complete current GRS, in PDF format, from NARA's Web site at *http://www.archives.gov/records-mgmt/grs.html.*

FOR FURTHER INFORMATION CONTACT: For more information about this notice or to obtain paper copies of the GRS, contact Kimberly Keravuori, External Policy Program Manager, at *regulation_comments@nara.gov,* or by telephone at 301.837.3151.

You may contact NARA's GRS Team with general questions about the GRS at *GRS_Team@nara.gov.* Writing and maintaining the GRS is the GRS Team's responsibility. This team is part of Records Management Services in the National Records Management Program, Office of the Chief Records Officer at NARA.

Your agency's records officer may contact the NARA appraiser or records analyst with whom your agency normally works for support in carrying out this transmittal and the revised portions of the GRS. You may access a list of the appraisal and scheduling work group and regional contacts on our Web site at *http://www.archives.gov/records-mgmt/appraisal/index.html.*

SUPPLEMENTARY INFORMATION:

What does GRS Transmittal 26 do?

GRS Transmittal 26 announces changes to the General Records Schedules (GRS) made since NARA published GRS Transmittals 24 and 25 in August and September 2015. The GRS provide mandatory disposition instructions for records common to several or all Federal agencies.

We are completely rewriting the GRS over the course of a five-year project. Because we are phasing in the entire change from old to new gradually over five years, the GRS during this interim period will necessarily include both old and new formats. New schedules (in table format) come first in the new transmittal, followed by the old schedules (in outline format) annotated to show which items are still current and which have been superseded by new schedules. With GRS Transmittal 26, we have superseded 39 percent of the old GRS by new schedules.

Each transmittal also includes frequently asked questions (FAQs) about the GRS, the GRS Update Project, and each new schedule, as well as new-to-old crosswalks for each new schedule and an overall old-to-new crosswalk.

What changes does this transmittal make to the GRS?

GRS Transmittal 26 publishes one new schedule:

GRS 4.4 Library Records (DAA–GRS–2015–0003)

It also publishes new or updated items in four schedules:

GRS 1.1 Financial Management and Reporting Records (see question 3)
GRS 2.8 Employee Ethics Records (see question 4)
GRS 4.2 Information Access and Protection Records (see question 5)
GRS 6.1 Capstone Electronic Mail Records (see question 6)

We have altered GRS 1.2, items 020–022. The note and exclusion previously (and incorrectly) shown in the overview covering all three items now modifies only item 020.

How has GRS 1.1 changed? How might these changes affect my agency?

We have added five new items (012, 013, 060, 070, and 071), per DAA–GRS–2016–0001.

If you store records that fall under GRS 1.1, item 010, you should carefully review your stored holdings to determine if new item 012 correctly describes any of them. These potentially voluminous records are immediately disposable, so you may be able to save on storage fees or space.

The old-to-new crosswalk and GRS 1.1 crosswalk now show old GRS 3, item 3d (Data submitted to the Federal Procurement Data System), superseded by GRS 1.1, item 013 (Data submitted to the Federal Procurement Data System), rather than by GRS 1.1, item 010 (Financial transaction records related to procuring goods and services, paying bills, collecting debts, and accounting). Originally, GRS 3, item 3d, was among the many old schedule items folded into GRS 1.1, item 010. General Services Administration requested that we restore the stand-alone item because these records do not concern individual financial transactions, but monitor Government procurement process transparency and equity. New item 013 therefore covers the same records as old GRS 3, item 3d, but as a stand-alone item.

How has GRS 2.8 changed? How might these changes affect my agency?

We have changed item 010, General ethics program records, to clarify the disposition instruction. The previous wording may have confused agencies about how long to keep some ethics records; agencies may need to keep them for longer than the old schedule seemed to indicate. Agency ethics officials provide employees with ethics advice that may pertain to a single situation or event, or that may apply to a recurring event or long-term situation. In the case of a single situation or event, the ethics determination (the ethics advice and counseling to individual employees, and supporting records) for that event is usually in effect only for the duration of that event. However, in the case of a recurring or long-term situation, the ethics determination is usually in effect throughout the period during which the recurring or long-term events occur, which could be years. The revised instruction clarifies that agencies should retain records for six years after an ethics determination is no longer in effect, rather than six years from when the agency issues the determination. For example, if the ethics official provides advice for a single, isolated event, the agency should retain the determination records for six years after that event occurs. But if the ethics official provides advice for a long-term situation that lasts for 15 years, the agency should retain the determination records for 15+6 years. Similarly, if the determination involves ethics advice about a recurring action or event an employee engages in off and on during 12 years, the agency should retain the determination records for 12+6 years. Since agencies may need to provide these records in a criminal prosecution, you should carefully note the determination date, including how long it is in effect, to ensure that the agency keeps the information available for six years after the ethics determination no longer applies.

How has GRS 4.2 changed? How might these changes affect my agency?

An exclusion formerly in item 020, Access and disclosure request files (''Record copies of requested records are not covered by this item. They remain covered by their original disposal authority''), has become a note (''Record copies of requested records remain covered by their original disposal authority, but if disposable sooner than their associated access/disclosure case file, may be retained under this item for disposition with that case file''). Records may acquire a new business purpose once they become the subject of a FOIA, Privacy Act, or Mandatory Declassification Review request. The previous exclusion text did not account for this new business purpose and thus could have led to offices destroying original records when their original retention period ended instead of when the new business purpose period ended. We have clarified the coverage for items 030, 032, and 040 to eliminate confusion reported by agencies.

Items 150, 160, 161, and 170 are new.

How has GRS 6.1 changed? How might these changes affect my agency?

We have altered permanent item 010's transfer date from 15 years to a 15-to-25-year band. FAQ 8 provides information about this change. In addition, we changed the cut-off for item 010 from the end of the calendar year to ''In accordance with agency's business needs,'' a change announced by AC 18.2016. FAQ 7 gives further information about this change. Finally, new FAQs 19 and 21–26 address how agencies may handle legacy email.

What old GRS items does GRS Transmittal 26 rescind?

Most old GRS items are, or will be, superseded by new GRS items. A few old items, however, have outlived their usefulness and cannot be crosswalked to new items. GRS Transmittal 26 rescinds two such items.

GRS 21, items 12 (Routine Scientific, Medical, or Engineering Footage) and 19 (Routine Scientific, Medical, or Engineering Video Recordings), have fallen out of use. These media-specific items cover very technical subject matter almost always created by research and development (R&D) functions. Federal Records Centers (FRCs) held records under these codes from only two agencies. The FRCs and the agencies agreed that we should reschedule these records under agency-specific authorities. The few agencies with such functions must therefore schedule the records their R&D programs create. These two items will not crosswalk to any anticipated future GRS item, so we are rescinding them.

How do I cite new GRS items?

When you send records to an FRC for storage, you should cite the records' legal authority—the ''DAA'' number—in the ''Disposition Authority'' column of the table. For informational purposes, please include schedule and item number. For example, ''DAA–GRS–2013–0001–0004 (GRS 4.3, item 020).''

Do I have to take any action to implement these GRS changes?

NARA regulations (36 CFR 1226.12(a)) require agencies to disseminate GRS changes within six months of receipt.

Per 36 CFR 1227.12(a)(1), you must follow GRS dispositions that state they must be followed without exception.

Per 36 CFR 1227.12(a)(3), if you have an existing schedule that differs from a new GRS item that does *not* require being followed without exception, and you wish to continue using your agency-specific authority rather than the GRS authority, you must notify NARA within 120 days of the date of this transmittal.

If you do not have an already existing agency-specific authority but wish to apply a retention period that differs from that specified in the GRS, you must create a records schedule in the Electronic Records Archives and submit it to NARA for approval.

Dated: August 30, 2016.

David S. Ferriero,

Archivist of the United States.

[FR Doc. 2016–21361 Filed 9–6–16; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

President's Committee on the Arts and the Humanities: Meeting #72

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that the 72nd meeting of the President's Committee on the Arts and the Humanities (PCAH) will tentatively be held at the Library of Congress, 101 Independence Ave. SE., Washington, DC 20540. Please contact PCAH for specific location information. Ending time is approximate.

DATES: September 23, 2016 from 10:00 a.m. to 12:30 p.m.

FOR FURTHER INFORMATION CONTACT: Anjali Lalani of the President's Committee at (202) 682–5409 or *alalani@pcah.gov.*

SUPPLEMENTARY INFORMATION: The meeting, on Friday, September 23rd, will begin with welcome and remarks from the co-chairs. This will be followed by updates on Committee programs (National Arts and Humanities Youth Program Awards, Turnaround Arts, National Student Poets Program, and Cultural Diplomacy). There also will be reports from the President's Committee partners and ex officio members, such as the Institute of Museum and Library Services (IMLS), National Endowment for the Arts (NEA), National Endowment for the Humanities (NEH), National Gallery of Art, John F. Kennedy Center for the Performing Arts, U.S. Department of Education, and the U.S. Department of State. The meeting will adjourn after closing remarks.

The President's Committee on the Arts and the Humanities was created by Executive Order in 1982, which currently states that the "Committee shall advise, provide recommendations to, and assist the President, the National Endowment for the Arts, the National Endowment for the Humanities, and the Institute of Museum and Library Services on matters relating to the arts and the humanities."

Any interested persons may attend as observers, on a space available basis, but seating is limited. Therefore, for this meeting, individuals wishing to attend are advised to contact Anjali Lalani of the President's Committee seven (7) days in advance of the meeting at (202) 682–5409 or write to the Committee at Constitution Center, 400 7th St. SW., Washington, DC 20506. Further information with reference to this meeting can also be obtained from Ms. Lalani at *alalani@pcah.gov.*

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, Constitution Center, 400 7th St. SW., Washington, DC 20506, (202) 682–5532, TDY–TDD (202) 682–5496, at least seven (7) days prior to the meeting.

Dated: September 1, 2016.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 2016–21437 Filed 9–6–16; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting of the ACRS Subcommittee on APR 1400; Notice of Meeting

The ACRS Subcommittee on APR 1400 will hold a meeting on September 21–22, 2016, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance with the exception of portions that may be closed to protect information that is proprietary pursuant to 5 U.S.C. 552b(c)(4). The agenda for the subject meeting shall be as follows:

Wednesday, September 21, 2016–8:30 a.m. until 5:00 p.m.; Thursday, September 22, 2016–8:30 a.m. until 12:00 p.m.

The Subcommittee will review the APR 1400 Safety Evaluation Reports with open items—Chapters 2 (site) and 5 (reactor coolant system). The Subcommittee will hear presentations by and hold discussions with the NRC staff and Korea Hydro & Nuclear Power Company regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Christopher Brown (Telephone 301–415–7111 or Email: *Christopher.Brown@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2015, (80 FR 63846).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: August 30, 2016.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2016–21435 Filed 9–6–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Southern Nuclear Operating Company, Inc., Vogtle Electric Generating Plant, Units 3 and 4; Diverse Actuation System Cabinet Changes

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the certification information of Tier 1 of the

generic design control document (DCD) and is issuing License Amendment No. 50 to Combined Licenses (COLs), NPF–91 and NPF–92. The COLs were issued to Southern Nuclear Operating Company, Inc., and Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, Authority of Georgia, and the City of Dalton, Georgia (the licensee); for construction and operation of the Vogtle Electric Generating Plant (VEGP) Units 3 and 4, located in Burke County, Georgia.

The granting of the exemption allows the changes to Tier 1 information asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "ADAMS Public Documents" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for the amendment and exemption was submitted by letter dated October 15, 2015, and available in ADAMS under Accession No. ML15288A549.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Paul Kallan, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2809; email: *Paul.Kallan@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is granting an exemption from paragraph B of section III, "Scope and Contents," of appendix D, "Design Certification Rule for the AP1000," to part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), and issuing License Amendment No. 50 to COLs, NPF–91 and NPF–92, to the licensee. The exemption is required by Paragraph A.4 of Section VIII, "Processes for Changes and Departures," appendix D, to 10 CFR part 52 to allow the licensee to depart from Tier 1 information. With the requested amendment, the licensee sought proposed changes that would revise the Updated Final Safety Analysis Report in the form of departures from the incorporated plant-specific DCD Tier 2 information. The proposed amendment also involves related changes to plant-specific Tier 1 information, with corresponding changes to the associated COL Appendix C information. Specifically, the licensee requested reconfiguration and relocation of the diverse actuation system cabinets. Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in 10 CFR 50.12, 10 CFR 52.7, and Section VIII.A.4 of appendix D to 10 CFR part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML16103A438.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for VEGP Units 3 and 4 (COLs NPF–91 and NPF–92). The exemption documents for VEGP Units 3 and 4 can be found in ADAMS under Accession Nos. ML16103A412 and ML16103A419, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–91 and NPF–92 are available in ADAMS under Accession Nos. ML16103A407 and ML16103A410, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to VEGP Units 3 and Unit 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated October 15, 2015, the licensee requested from the Commission an exemption from the provisions of 10 CFR part 52, appendix D, Section III.B, as part of license amendment request 15–005, "Diverse Actuation System (DAS) Cabinet Changes (LAR 15–005)."

For the reasons set forth in Section 3.1, "Evaluation of Exemption," of the NRC staff's safety evaluation, which can be found in ADAMS under Accession No. ML16103A438, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption from the certified DCD Tier 1 information, with corresponding changes to Appendix C of the Facility COLs as described in the licensee's request dated October 15, 2015. This exemption is related to, and necessary for, the granting of License Amendment No. 50, which is being issued concurrently with this exemption.

3. As explained in Section 5.0, "Environmental Consideration," of the NRC staff's safety evaluation (ADAMS Accession No. ML16103A438), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

III. License Amendment Request

By letter dated October 15, 2015, the licensee requested that the NRC amend the COLs for VEGP, Units 3 and 4, COLs NPF–91 and NPF–92. The proposed amendment is described in Section I of this **Federal Register** notice.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or COL, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on October 27, 2015 (80 FR 65807). No comments were received during the 30-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested on October 15, 2015. The exemption and amendment were issued on April 12, 2016 as part of a combined package to the licensee (ADAMS Accession No. ML16103A382).

Dated at Rockville, Maryland, this 29th day of August 2016.

For the Nuclear Regulatory Commission.

Jennifer Dixon-Herrity,

Acting Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2016–21438 Filed 9–6–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting of the ACRS Subcommittee on

Economic Simplified Boiling Water Reactors (ESBWR); Notice of Meeting

The ACRS Subcommittee on ESBWR will hold a meeting on September 22, 2016, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, September 22, 2016—1:00 p.m. until 5:00 p.m.

The Subcommittee will review the North Anna Unit 3 Combined License Application (COLA). The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, Detroit Edison, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Girija Shukla (Telephone 301–415–6855 or Email: *Girija.Shukla@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2015 (80 FR 63846).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (240–888–9835) to be escorted to the meeting room.

Dated: August 16, 2016.

Mark L. Banks,

Chief Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2016–21436 Filed 9–6–16; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Preston Royalty Corp.; Order of Suspension of Trading

September 2, 2016.

It appears to the Securities and Exchange Commission that the public interest and the protection of investors require a suspension of trading in the securities of Preston Corp. (a/k/a Preston Royalty Corp.) (CIK No. 0001594219) because of questions regarding the adequacy and accuracy of available information about Preston Corp. in light of a false statement about the permitting status of a mine in the company's August 10, 2016 press release and questions regarding the adequacy and accuracy of clarifications Preston Corp. provided in a September 1, 2016, press release about the mining project. Preston Corp. is a Nevada corporation whose principal place of business is located in Austin, Texas. Its stock is quoted on OTC Link (previously "Pink Sheets") operated by OTC Markets Group, Inc. under the ticker symbol PSNP.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT on September 2, 2016, through 11:59 p.m. EDT on September 16, 2016.

By the Commission.

Brent J. Fields,

Secretary.

[FR Doc. 2016–21584 Filed 9–2–16; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78740; File No. SR–Phlx–2016–88]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Prior Rule Change, SR–PHLX–2016–38

August 31, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on August 23, 2016, NASDAQ PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend prior rule change, SR–Phlx–2016–38,[3] which inadvertently contained the incorrect Exhibit 3.

The text of the proposed rule change is available on the Exchange’s Web site at *http://nasdaqomxphlx.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the previously submitted filing SR–Phlx–2016–38, which contained an incorrect version of the Exchange’s membership application as *Exhibit 3.* This rule filing seeks to provide the current membership application in *Exhibit 3(a)* which became operative on July 1, 2016.

Following the filing of SR–PHLX–2016–38 the Exchange continued to use the “legacy” membership application though June 30, 2016 which is contained in *Exhibit 3,* however, the Exchange did not receive any membership applications. The membership application which is contained in *Exhibit 3(a)* and was filed on May 2 [sic], 2016 as part of SR–PHLX–2016–38 is a new consolidated membership form which is applicable to The Nasdaq Stock Market, Nasdaq BX, and Nasdaq PHLX which went into effect following the effectiveness of Rule 921(b) and does not require the Executive Representative of a PHLX member firm to provide evidence of their designation as the Executive Representative.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(5) of the Act,[5] in particular, in that it is designed to protect investors and the public interest by streamlining various aspects of the membership process. The filing of the updated membership form will promote just and equitable principles of trade, and foster cooperation and coordination with persons engaged in facilitating transactions in securities by eliminating confusion among forms.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[6] and subparagraph (f)(6) of Rule 19b–4 thereunder.[7]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2016–88 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2016–88. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (*http://www.sec.gov/*

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities and Exchange Act Release No. 77475 (Match 30, 2016), 81 FR 19664 (April 5, 2016) (SR–Phlx–2016–36) [sic].

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(a)(iii) [sic].

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2016–88 and should be submitted on or before September 28, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–21379 Filed 9–6–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32248; 812–14572]

Voya ETF Trust, et al.; Notice of Application

August 30, 2016.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) index-based series of certain open-end management investment companies ("Funds") to issue shares redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value ("NAV"); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds ("Funds of Funds") to acquire shares of the Funds; and (f) certain Funds ("Feeder Funds") to create and redeem Creation Units in-kind in a master-feeder structure.

APPLICANTS: Voya ETF Trust (the "Trust"), a Delaware statutory trust that will be registered under the Act as an open-end management investment company; Voya Investments, LLC, an Arizona limited liability company, and Directed Services LLC, a Delaware a limited liability company (together the "Initial Advisers" and individually, each an "Initial Adviser"), each registered as an investment adviser under the Investment Advisers Act of 1940; and Voya Investments Distributor, LLC ("Distributor"), an Arizona limited liability company and broker-dealer registered under the Securities Exchange Act of 1934 ("Exchange Act").

DATES: *Filing Dates:* The application was filed on October 27, 2015, and amended on April 7, 2016.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 26, 2016, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: 7337 East Doubletree Ranch Road, Suite 100, Scottsdale, Arizona 85258.

FOR FURTHER INFORMATION CONTACT: Steven I. Amchan, Senior Counsel, at (202) 551–6826, or David J. Marcinkus, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. Applicants request an order that would allow Funds to operate as index exchange traded funds ("ETFs").[1] Fund shares will be purchased and redeemed at their NAV in Creation Units only. All orders to purchase Creation Units and all redemption requests will be placed by or through an "Authorized Participant", which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Certain Funds may operate as Feeder Funds in a master-feeder structure. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will hold investment positions selected to correspond generally to the performance of an Underlying Index. In the case of Self-Indexing Funds, an affiliated person, as defined in section 2(a)(3) of the Act ("Affiliated Person"), or an affiliated person of an Affiliated Person ("Second-Tier Affiliate"), of the Trust or a Fund, of the Adviser, of any sub-adviser to or promoter of a Fund, or of the Distributor will compile, create, sponsor or maintain the Underlying Index.[2]

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[8] 17 CFR 200.30–3(a)(12).

[1] Applicants request that the order apply to the initial series of the Trust and any additional series of the Trust, and any other open-end management investment company or series thereof, that may be created in the future (each, included in the term "Fund"), each of which will operate as an ETF and will track a specified index comprised of domestic or foreign equity and/or fixed income securities (each, an "Underlying Index"). Any Fund will (a) be advised by an Initial Adviser or an entity controlling, controlled by, or under common control with an Initial Adviser (each, an "Adviser") and (b) comply with the terms and conditions of the application.

[2] Each Self-Indexing Fund will post on its Web site the identities and quantities of the investment positions that will form the basis for the Fund's calculation of its NAV at the end of the day.

Continued

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments (“Deposit Instruments”), and shareholders redeeming their shares will receive specified instruments (“Redemption Instruments”). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund’s portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c–1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund’s prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that effect creations and redemptions of Creation Units in kind and that are based on certain Underlying Indexes that include foreign securities, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application’s terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those investment positions currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[3] The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Applicants also request relief to permit a Feeder Fund to acquire shares of another registered investment company managed by the Adviser having substantially the same investment objectives as the Feeder Fund (“Master Fund”) beyond the limitations in section 12(d)(1)(A) and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B).

10. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–21248 Filed 9–6–16; 8:45 am]

BILLING CODE 8011–01–P

Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will help address, together with other protections, conflicts of interest with respect to such Funds.

[3] The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78743; File No. SR–NYSEArca-2016–15]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Withdrawal of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rule 6.67(c) by Revising the Clearing Member Requirements for Entering an Order into the Electronic Order Capture System

August 31, 2016.

On March 22, 2016, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)[1] and Rule

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[1] 15 U.S.C. 78s(b)(1).

19b-4 thereunder,[2] a proposed rule change to amend Rule 6.67(c) to change the timing for recording the name of the Clearing Member[3] in the Electronic Order Capture system ("EOC"). On March 29, 2016,[4] the Exchange filed Amendment No. 1 to the proposed rule change. The Commission published the proposed rule change, as modified by Amendment No. 1, for comment in the **Federal Register** on April 11, 2016.[5] The Commission received no comments on the proposed rule change. On May 25, 2016 the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to July 10, 2016.[6] On July 7, 2016, the Commission instituted proceedings under section 19(b)(2)(B) of the Act[7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[8] The Commission received no comments on the proposed rule change.

On August 29, 2016, the Exchange withdrew the proposed rule change (SR–NYSEArca-2016–15).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–21382 Filed 9–6–16; 8:45 am]

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[2] 17 CFR 240.19b-4.

[3] Rule 6.1(b)(3) defines "Clearing Member" as an Exchange OTP which has been admitted to membership in the Options Clearing Corporation pursuant to the provisions of the Rules of the Options Clearing Corporation.

[4] The Commission notes that the amendment date of March 30, 2016 in the SR–NYSEArca-2016–15 Notice is incorrect and the proper date is March 29, 2016.

[5] *See* Securities Exchange Act Release No. 34–77516 (April 5, 2016), 81 FR 21430 ("Notice"). Amendment No.1 was included in the Notice and provided the clarification that the CMTA Information and the name of the clearing OTP Holder would be entered into the EOC "as the events occur and/or during trade reporting procedures which may occur after the representation and execution of the order."

[6] *See* Securities Exchange Act Release No. 34–77909, 81 FR 35079 (June 1, 2016).

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 34–78239, 81 FR 45349 (July 13, 2016).

[9] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a closed meeting on Thursday, September 8, 2016 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(7), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matter at the closed meeting.

Chair White, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: September 1, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–21585 Filed 9–2–16; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78744; File No. SR–NYSEMKT–2016–48]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend Certain Rules Relating to Flexible Exchange Options

August 31, 2016.

On July 1, 2016, NYSE MKT LLC ("NYSE MKT" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend certain rules related to Flexible Exchange ("FLEX") Options. The proposed rule change was published for comment in the **Federal Register** on July 21, 2016.[3] On August 30, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.[4] No comments have been received on the proposed rule change.

Section 19(b)(2) of the Act[5] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is September 4, 2016. The Commission is extending this 45-day time period for Commission action on the proposed rule change.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change, as modified by Amendment No. 1. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] and for the reason noted above, designates October 19, 2016 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEMKT–2016–48).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–21383 Filed 9–6–16; 8:45 am]

BILLING CODE 8011–01–P

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[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 78348 (July 15, 2016), 81 FR 47469.

[4] Amendment No. 1 adds detail about limitations on FLEX Binary Return Derivatives ("ByRDs"), specifies that Asian and Cliquet style settlements will be available for broad-based FLEX Index Options only, and removes an alternative exercise settlement style for FLEX Equity Options. *See* Amendment No. 1.

[5] 15 U.S.C. 78s(b)(2).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32249; 812–14658]

Regents Park Funds, LLC, et al.; Notice of Application

August 31, 2016.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) actively-managed series of certain open-end management investment companies ("Funds") to issue shares redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value ("NAV"); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds ("Funds of Funds") to acquire shares of the Funds.

APPLICANTS: Regents Park Funds, LLC ("Regents Park"), a California limited liability company that will be registered as an investment adviser under the Investment Advisers Act of 1940, Northern Lights Fund Trust IV ("Trust"), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series, and Northern Lights Distributors, LLC ("NLD"), a Nebraska limited liability company and broker-dealer registered under the Securities Exchange Act of 1934 ("Exchange Act").

DATES: *Filing Dates:* The application was filed on June 6, 2016.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 26, 2016, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: c/o JoAnn Strasser, 41 S High Street, Columbus, Ohio 43215.

FOR FURTHER INFORMATION CONTACT: Kaitlin C. Bottock, Senior Counsel, at (202) 551–8658, or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. Applicants request an order that would allow Funds to operate as actively-managed exchange traded funds ("ETFs").[1] Fund shares will be purchased and redeemed at their NAV in Creation Units only. All orders to purchase Creation Units and all redemption requests will be placed by or through an "Authorized Participant", which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will consist of a portfolio of securities and other assets, and investment positions ("Portfolio Instruments"). Each Fund will disclose on its Web site the identities and quantities of the Portfolio Instruments that will form the basis for the Fund's calculation of NAV at the end of the day.

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments ("Deposit Instruments"), and shareholders redeeming their shares will receive specified instruments ("Redemption Instruments"). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c–1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that hold non-U.S. Portfolio Instruments and that effect creations and redemptions of Creation Units in kind, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fourteen calendar days

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[1] Applicants request that the order apply to the initial series and any future series of the Trust as well as other future open-end management companies (each, included in the term "Fund"). Any Fund will (a) be advised by Regents Park or an entity controlling, controlled by, or under common control with Regents Park (Regents Park and each such other entity and any successor thereto included in the term "Adviser"), and (b) comply with the terms and conditions of the application.

following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Instruments currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[2] The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–21429 Filed 9–6–16; 8:45 am]

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[2] The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78741; File No. SR–CBOE–2016–063]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

August 31, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 19, 2016, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to make changes to the Non-Standard Booth Rental Fee in the Facility Fees section of the Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fees Schedule. Specifically, the Exchange proposes changes to the Non-Standard Booth Rental Fee in the Facility Fees section of the Fees Schedule. In general, a "standard booth" on the Exchange refers to a portion of designated space on the trading floor of the Exchange adjacent to particular trading crowds, which may be occupied by a Trading Permit Holder ("TPH"), clerks, runners, or other support staff for operational and other business-related activities. The term "non-standard booth" generally refers to space on the trading floor of the Exchange that is set off from a trading crowd, which may be rented by a TPH for whatever support, office, back-office, or any other business-related activities for which the TPH may choose to use the space.

Currently, TPHs that rent non-standard booth space on the floor of the Exchange pay a monthly fee on a per square foot basis for use of the space. The per square foot fee that a TPH pays for non-standard booth space is determined based on the size of the booth and length of the non-standard booth lease term that the TPH entered into with the Exchange. In general, the greater the size of the booth and the longer the term of the lease, the less the TPH pays per square foot of non-standard booth space. Specifically, non-standard booth rental fees are assessed according to the following table: [3]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

	Booth size	Per sq. ft.	Per sq. ft.	Per sq. ft.
Non-Standard Booth Rental Fee	Extra Large (1,000 sq. ft. or greater)	$2.83	$2.75	$2.69
	Large (800–999 sq. ft.)	4.12	4.00	3.91
	Medium (401–799 sq. ft.)	4.89	4.74	4.65
	Small (400 sq. ft. or less)	7.72	7.49	7.33
	Length of Lease	1 Year	2 Years (97%)	3 Years (95%)

The Exchange notes that under the current Non-Standard Booth Rental Fee table, a TPH that rents more space for less time than another TPH may pay a lower total monthly non-standard booth rental fee than the TPH that rents less space for more time. For example, under the current Non-Standard Booth Rental Fee table, a TPH that rents a 700 square foot non-standard booth for three years will pay $4.65 per square foot or a total non-standard booth rental fee of $3,255 per month, whereas a TPH that rents an 1,000 square foot non-standard booth for one year will pay $2.83 per square foot or a total non-standard booth rental fee of $2,830 per month. Thus, as demonstrated by the above example, in many cases, a TPH may rent a bigger non-standard booth for less than a smaller non-standard booth regardless of the lease term. The Exchange believes that this regime creates an incentive for TPHs to rent more non-standard booth space than they may need.

The Exchange proposes to amend the Fees Schedule so that TPHs that rent more non-standard booth space would pay a higher non-standard booth rental fee than those that rent less space. In particular, the Exchange proposes to amend the Fees Schedule to include the following non-standard booth rental fee table:

Non-Standard booth rental fee	Base booth rental fee	Square footage fee (up to 1,000 sq. ft.)
	$1,250	$1.70 (per sq. ft.)

Under the Exchange's proposal, a TPH that rents non-standard booth space on the floor of the Exchange would pay a base non-standard booth rental fee of $1,250 per month in addition to a square footage fee of $1.70 per square foot per month based on the size of the TPH's non-standard booth. Thus, under the proposed non-standard booth rental fee change, a TPH that rents more non-standard booth space than another TPH would pay more than the TPH with less space (*i.e.* $1.70 more per each additional square foot that the TPH rents). For example, under the proposed non-standard booth rental fee, a TPH that rents a 400 square foot non-standard booth would pay a total non-standard booth rental fee of $1,930 per month (*i.e.* $1,250 (base fee) + ($1.70 × 400 = $680 (square footage fee)) = $1930) while a TPH that rents an 1,000 square foot non-standard booth would pay $2,950 per month ($1,250 + ($1.70 × 1,000) = $2,950).[4] Under the proposed fee change, a TPH or TPH organization would be able to rent up to 1,000 square feet of non-standard booth space on the floor of the Exchange. The 1,000 square foot cap would help ensure the availability of sufficient space on the floor of the Exchange to accommodate TPHs and TPH organizations that wish to rent non-standard booths.[5]

Notably, under the proposed fee change, effective September 1, 2016, the Exchange would no longer offer discounts for longer lease terms—all lease terms would be for a period of one year.[6] Thus, the separate one year, two year, and three year columns in the Non-Standard Booth Rental Fee section of the current Fees Schedule would be deleted and the Notes in the proposed Non-Standard Booth Rental Fee table of the Fees Schedule would provide that non-standard booths must be leased for a term of one year. In addition, the Exchange proposes to make other corresponding changes to the Notes section of the Non-Standard Booth Rental Fee table in the Fees Schedule reflecting that non-standard booth rental fees would continue to be assessed on a monthly basis and would include both the base booth rental fee plus the appropriate square footage fee as determined based on the size of the booth.[7] The current early termination penalty provisions in the Notes section of the Non-Standard Booth Rental Fee table would remain unchanged, but would include an additional provision providing that early termination penalties will not be assessed for early termination of leases entered into prior to August 1, 2016 that are terminated by mutual agreement of the TPH organization and the Exchange.[8] The Booth Pass-Through Fee would remain unchanged.[9]

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[3] *See* Non-Standard Booth Rental Fee in the Facility Fees section of the Fees Schedule *available at http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf.*

[4] There are currently four TPH organizations that rent non-standard booths on the floor of the Exchange. Notably, under the proposed rule change, non-standard booth rental fees would be similar to what they are now under the current Fees Schedule. In no case would a TPH's non-standard booth rental fee increase by more than $120 per month and in some cases, non-standard booth rental fees would decrease under the proposed rule change.

[5] No TPH currently rents more than 1,000 feet of non-standard booth space on the floor of the Exchange.

[6] The Exchange's proposed rule change, however, would not apply retroactively. Unexpired leases signed under the terms provided in the current Fees Schedule that are currently in force would be effective and enforceable until expiration unless termination were mutually agreed to between the TPH and the Exchange. As stated above, there are currently four TPH organizations that rent non-standard booths on the floor of the Exchange pursuant to preexisting leases (each of which expires in 2016). The Exchange believes that several of these TPH organizations may wish to terminate their leases by mutual agreement with the Exchange because renewal under the proposed rule change would result in a beneficial cost savings. The Exchange would agree to terminate all such preexisting leases with the appropriate consent of each respective TPH.

[7] *Compare* proposed Notes language *with* the current Notes section of the Non-Standard Booth Rental Fees Table in the Fees Schedule, which provides that a Trading Permit Holder ("TPH") organization will pay the fees per square foot on a monthly basis for use of a non-standard booth. Currently, the fee per square foot a TPH organization will pay is determined based on the size of the booth and length of the lease the TPH organization enters into with the Exchange. The greater the size of the booth and the longer the term of the lease will result in a reduced fee per square foot.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[10] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[11] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[12] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed rule change is proposed rule change is consistent with Section 6(b)(4) of the Act,[13] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its TPHs and other persons using its facilities. The Exchange believes that non-standard booth rental fees should be designed such that TPHs that rent more non-standard booth space on the floor of the Exchange pay more than those that rent less non-standard booth space. The Exchange believes that the proposed rule change is consistent with the Act in that it provides for equitable allocation of reasonable fees among TPHs by requiring those that use more resources to pay more than those that use less. The Exchange also believes that the proposed rule change would simplify the way that non-standard booth rental fees are assessed on the Exchange and add clarity to the Fees Schedule. The Exchange believes that adding clarity to the Rules is in the best interests of investors and the general public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposed rule change will relieve any burden on, or otherwise promote, competition by adopting a simpler fee structure for non-standard booth rental on the floor of the Exchange. Under the proposed non-standard booth rental fee all TPHs would pay the same base rate with those that rent more space paying a higher square footage fee than those that rent less space on proportional basis.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and paragraph (f) of Rule 19b–4[15] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2016–063 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2016–063. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2016–063, and should be submitted on or before September 28, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–21380 Filed 9–6–16; 8:45 am]

BILLING CODE 8011–01–P

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[8] Under the early termination provisions in Notes to the Non-Standard Booth Rental Fee in the current Fees Schedule, a TPH organization that terminates its lease prior to its expiration date will, on the effective date of such termination, pay to the Exchange an amount equal to twenty five percent (25%) of the balance of the monthly charges remaining in the lease term.

[9] Pursuant to the Booth Pass-Through Fee, TPHs bear responsibility for all costs associated with any modifications and alterations to any trading floor booths leased by the TPH (or TPH organization) and must reimburse the Exchange for all costs incurred in connection therewith.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *Id.*

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78742; File No. SR–NYSEMKT–2016–13]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Withdrawal of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rule 955NY(c) by Revising the Clearing Member Requirements for Entering an Order Into the Electronic Order Capture System

August 31, 2016.

On March 22, 2016, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 955NY(c) to change the timing for recording the name of the Clearing Member[3] in the Electronic Order Capture system ("EOC"). On March 29, 2016,[4] the Exchange filed Amendment No. 1 to the proposed rule change. The Commission published the proposed rule change, as modified by Amendment No. 1, for comment in the **Federal Register** on April 11, 2016.[5] The Commission received no comments on the proposed rule change. On May 25, 2016 the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to July 10, 2016.[6] On July 7, 2016, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act[7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[8] The Commission received no comments on the proposed rule change.

On August 29, 2016, the Exchange withdrew the proposed rule change (SR–NYSEMKT–2016–13).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–21381 Filed 9–6–16; 8:45 am]

BILLING CODE 8011–01–P

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Rule 900.2NY defines "Clearing Member" as an Exchange ATP Holder which has been admitted to membership in the Options Clearing Corporation pursuant to the provisions of the Rules of the Options Clearing Corporation.

[4] The Commission notes that the amendment date of March 30, 2016 in the SR–NYSEMKT–2016–13 Notice is incorrect and the proper date is March 29, 2016.

[5] *See* Securities Exchange Act Release No. 34–77518 (April 5, 2016), 81 FR 21415 ("Notice"). Amendment No.1 was included in the Notice and provided the clarification that the CMTA Information and the name of the clearing ATP Holder would be entered into the EOC "as the events occur and/or during trade reporting procedures which may occur after the representation and execution of the order."

[6] *See* Securities Exchange Act Release No. 34–77910, 81 FR 35098 (June 1, 2016).

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 34–78238, 81 FR 45323 (July 13, 2016).

[9] 17 CFR 200.30–3(a)(57).

SURFACE TRANSPORTATION BOARD

Release of Waybill Data

The Surface Transportation Board has received a request from two professors that work for the University of Oregon and Stanford University (WB16–37—8/25/16) for permission to use certain unmasked data from the Board's 1984–2014 Carload Waybill Samples. A copy of this request may be obtained from the Office of Economics.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Alexander Dusenberry, (202) 245–0319.

Tia Delano,

Clearance Clerk.

[FR Doc. 2016–21411 Filed 9–6–16; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[STB Docket No. EP 670 (Sub–No. 1)]

Notice of Rail Energy Transportation Advisory Committee Meeting

AGENCY: Surface Transportation Board.

ACTION: Notice of Rail Energy Transportation Advisory Committee meeting.

SUMMARY: Notice is hereby given of a meeting of the Rail Energy Transportation Advisory Committee (RETAC), pursuant to the Federal Advisory Committee Act (FACA.

DATES: The meeting will be held on Thursday, September 22, 2016, at 9:00 a.m. E.D.T.

ADDRESSES: The meeting will be held in the Hearing Room on the first floor of the Board's headquarters at 395 E Street SW., Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Jason Wolfe (202) 245–0239; *Jason.Wolfe@stb.gov.* [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877–8339].

SUPPLEMENTARY INFORMATION: RETAC was formed in 2007 to provide advice and guidance to the Board, and to serve as a forum for discussion of emerging issues related to the transportation of energy resources by rail, including coal, ethanol, and other biofuels. *Establishment of a Rail Energy Transportation Advisory Committee,* Docket No. EP 670. The purpose of this meeting is to continue discussions regarding issues such as rail performance, capacity constraints, infrastructure planning and development, and effective coordination among suppliers, carriers, and users of energy resources. Potential agenda items for this meeting include a performance measures review, industry segment updates by RETAC members, a presentation on energy generation reliability issues, and a roundtable discussion.

The meeting, which is open to the public, will be conducted in accordance with the Federal Advisory Committee Act, 5 U.S.C. app. 2; Federal Advisory Committee Management regulations, 41 CFR pt. 102–3; RETAC's charter; and Board procedures. Further communications about this meeting may be announced through the Board's Web site at *WWW.STB.DOT.GOV.*

Written Comments: Members of the public may submit written comments to RETAC at any time. Comments should be addressed to RETAC, c/o Jason Wolfe, Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001 or *Jason.Wolfe@stb.gov.*

Authority: 49 U.S.C. 1321, 49 U.S.C. 11101; 49 U.S.C. 11121.

Decided: August 31, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Marline Simeon,

Clearance Clerk.

[FR Doc. 2016–21456 Filed 9–6–16; 8:45 am]

BILLING CODE 4915–01–P

TENNESSEE VALLEY AUTHORITY

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: 60-Day notice of submission of information collection approval and request for comments.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR 1320.8(d)(1).

DATES: Comments should be sent to the Agency Clearance Officer no later than November 7, 2016.

ADDRESSES: Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Senior Privacy Program Manager: Christopher A. Marsalis, Tennessee Valley Authority, 400 W. Summit Hill Dr. (WT 5D), Knoxville, Tennessee 37902–1401; telephone (865) 632–2467 or by email at *camarsalis@tva.gov;* or to Joy L. Lloyd, Tennessee Valley Authority, 400 W. Summit Hill Dr. (WT 5A), Knoxville, Tennessee 37902–1401; telephone (865) 632–8370 or by email at *jllloyd@tva.gov;* or to the Agency Clearance Officer: Philip D. Propes, Tennessee Valley Authority, 1101 Market Street (MP 2C), Chattanooga, Tennessee 37402–2801; telephone (423) 751–8593 or email at *pdpropes@tva.gov.*

SUPPLEMENTARY INFORMATION:

Type of Request: Reauthorization.

Title of Information Collection: Employment Application.

Frequency of Use: On Occasion.

Type of Affected Public: Individuals.

Small Businesses or Organizations Affected: No.

Federal Budget Functional Category Code: 999.

Estimated Number of Annual Responses: 50,102.

Estimated Total Annual Burden Hours: 45,913.

Estimated Average Burden Hours per Response: .92.

Need For and Use of Information: Applications for employment are needed to collect information on qualifications, suitability for employment, and eligibility for veteran's preference. The information is used to make comparative appraisals and to assist in selections. The affected public consists of individuals who apply for TVA employment.

Philip D. Propes,

Director, Enterprise Information Security and Policy.

[FR Doc. 2016–21370 Filed 9–6–16; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of the Southern California Metroplex Final Environmental Assessment and Finding of No Significant Impact/Record of Decision

AGENCY: Federal Aviation Administration.

ACTION: Notice of availability of Final Environmental Assessment and Finding of No Significant Impact/Record of Decision.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that it has published a Final Environmental Assessment and Finding of No Significant Impact/Record of Decision for the Southern California Metroplex project.

FOR FURTHER INFORMATION CONTACT: Ryan Weller, Environmental Specialist, Western Service Center-Operations Support Group, 1601 Lind Ave. SW., Renton, WA 98057, email address: *9-ANM-SoCalOAPM@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA has prepared a Final Environmental Assessment (EA) to assess the potential environmental impacts of the SoCal Metroplex project in compliance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* This notice announces that based on the information and analysis contained in the EA, the FAA is issuing a Finding of No Significant Impact and Record of Decision (FONSI/ROD) for the project. The EA and FONSI/ROD document the FAA's determination that the project, as proposed, would not significantly affect the quality of the human environment and that an Environmental Impact Statement (EIS) is therefore not necessary. The FONSI/ROD documents the FAA's decision to proceed with the preferred alternative detailed in the EA. The SoCal Metroplex project will improve the efficiency of the national airspace system in the Southern California area by optimizing aircraft arrival and departure procedures at 21 Southern California airports.

Availability: The EA and FONSI/ROD are available for public review at: (1) Online at: *http://www.metroplexenvironmental.com/socal_metroplex/socal_introduction.html.*

(2) Hard-copies are available at these libraries:

—Los Angeles Central Library, 630 W. 5th Street, Los Angeles, CA 90071
—Santa Monica Public Library, 601 Santa Monica Boulevard, Santa Monica, CA 90401
—Anaheim Public Library, 500 W. Broadway, Anaheim, CA 92805
—Riverside Public Library, 3581 Mission Inn Avenue, Riverside, CA 92501
—Point Loma/Hervey Library, 3701 Voltaire St., San Diego, CA 92107
—San Diego Central Library, 330 Park Boulevard, San Diego, CA 92101
—E.P. Foster Library, 651 E. Main Street, Ventura, CA 93001

(3) Electronic versions of the EA and FONSI/ROD are available at libraries in the General Study Area. A complete list of libraries with electronic copies of the EA and FONSI/ROD is available online: *http://www.metroplexenvironmental.com/socal_metroplex/socal_introduction.html.*

Issued in Washington, DC on August 31, 2016.

Gary Norek,

Director, Airspace Services, AJV–1.

[FR Doc. 2016–21413 Filed 9–2–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Announcement of Fiscal Year 2016 Low or No Emission Grant Program Project Selections

AGENCY: Federal Transit Administration

ACTION: Notice.

SUMMARY: The U.S. Department of Transportation's Federal Transit Administration (FTA) announces the selection of projects with Fiscal Year (FY) 2016 appropriations for the Low or No Emission Grant Program (Low-No Program), as authorized by the Fixing America's Surface Transportation Act (FAST) Act. The FAST Act authorized $55 million for competitive allocations in FY 2016. On March 29, 2016, FTA published a Notice of Funding Opportunity (NOFO) (81 FR 17553) announcing the availability of Federal funding for the Low-No Program. These program funds will provide financial assistance to states and eligible public agencies for the purchase or lease of low or no emission vehicles that use advanced technologies and for related equipment or facilities use for transit revenue operations.

FOR FURTHER INFORMATION CONTACT: Successful applicants should contact the appropriate FTA Regional Office for information regarding applying for the funds or program-specific information. A list of Regional Offices can be found at *www.fta.dot.gov.* Unsuccessful applicants may contact Tara Clark, Office of Program Management at (202) 366–2623, email: *Tara.Clark@dot.gov,* to arrange a proposal debriefing within 30 days of this announcement. A TDD is available at 1–800–877–8339 (TDD/FIRS).

SUPPLEMENTARY INFORMATION: In response to the NOFO, FTA received 101 proposals from 32 states requesting $446 million in Federal funds, indicating significant demand for funding for low or no emission capital projects. Project proposals were evaluated based on each applicant's responsiveness to the program evaluation criteria outlined in the NOFO.

FTA is funding 20 projects as shown in Table 1 for a total of $55 million. Recipients selected for competitive funding should work with their FTA Regional Office to finalize the grant application in FTA's Transit Award Management System (TrAMs) for the projects identified in the attached table to quickly obligate funds. Grant applications must include eligible activities applied for in the original project application. Funds must be used consistent with the competitive proposal and for the eligible capital purposes established in the NOFO and described in the FTA Circular 9030.1E.

In cases where the allocation amount is less than the proposer's total requested amount, recipients must fund the scalable project option as described in the application. If the award amount does not correspond to the scalable option, for example due to a cap on the award amount, the recipient should work with the Regional Office to reduce scope or scale of the project such that a complete phase or project is accomplished. Recipients are reminded that program requirements such as cost sharing or local match can be found in the NOFO. A discretionary project identification number has been assigned to each project for tracking purposes and must be used in the TrAMs application.

Selected projects are eligible to incur costs under pre-award authority no earlier than the date projects were publicly announced, July 26, 2016. Pre-award authority does not guarantee that project expenses incurred prior to the award of a grant will be eligible for reimbursement, as eligibility for reimbursement is contingent upon other requirements, such as planning and environmental requirements, having been met. For more about FTA's policy on pre-award authority, please see the FTA Fiscal Year 2016 Apportionments, Allocations, and Program Information and Interim Guidance found in 81 FR 7893 (February 16, 2016). Post-award reporting requirements include submission of the Federal Financial Report and Milestone progress reports in TrAMs as appropriate (see Grant Management Requirements FTA.C.5010.1D and Urbanized Area Formula Program: Program Guidance and Application Instructions C9030.1E). Recipients must comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal requirements in carrying out the project supported by the FTA grant. For selected projects that involve partnerships, the competitive selection process will be deemed to satisfy the requirement for a competitive procurement under 49 U.S.C. 5325(a). All other recipients must follow all third-party procurement guidance as described in FTA.C.4220.1F. Funds allocated in this announcement must be obligated in a grant by September 30, 2019.

Carolyn Flowers,

Acting Administrator.

TABLE 1—FY 16 LOW OR NO EMISSION PROJECT SELECTIONS

State	Recipient	Project ID	Project description	Allocation
CA	Central Contra Costa Transit Authority	D2016–LWNO–001	County Connection Battery Electric Bus Project.	$2,684,311
CA	Long Beach Public Transportation Company.	D2016–LWNO–002	LBT 30-foot Battery Electric Bus Project	1,172,867
CA	Santa Clara Valley Transportation Authority (VTA).	D2016–LWNO–003	VTA Battery-Electric Zero Emission Bus, Charging and maintenance Facility Project.	2,458,305
CA	Santa Cruz Metropolitan Transit District	D2016–LWNO–004	Santa Cruz METRO Electric Bus Deployment.	3,810,348
CA	SunLine Transit Agency	D2016–LWNO–005	SunLine Center of Excellence in Zero Emission Technology (Fuel Cell/Electric Bus Maintenance Facility).	1,519,855
DE	Delaware Transit Corporation	D2016–LWNO–006	Delaware Transit Corporation Deployment of Battery Electric Buses.	2,029,300
FL	Miami-Dade County	D2016–LWNO–007	Miami-Dade Department of Transportation and Public Works Electric Bus Purchase for Bus Replacement Program.	2,357,143
IL	Chicago Transit Authority	D2016–LWNO–008	Chicago Transit Authority (CTA) Electric Bus Program—Purchase Electric Buses and Charging Stations.	3,620,000
KY	Transit Authority of Lexington-Fayette Urban Co Govt.	D2016–LWNO–009	Lextran Zero-Emission Electric Bus Fleet Expansion Project.	683,400
LA	City of Shreveport	D2016–LWNO–010	City of Shreveport Electric Bus Deployment Project.	3,905,377
MO	The City of Columbia	D2016–LWNO–011	City of Columbia Zero Emission Bus Deployment Project.	1,712,300
NY	Capital District Transportation Authority	D2016–LWNO–012	Expanding CDTA's Clean, Greener footprint Purchase Zero Emission Electric Buses and Associated Support Equipment.	767,500
OR	Lane Transit District	D2016–LWNO–013	Lane Transit District Zero Emission Bus Project (LTD–ZEB).	3,479,675
OR	Tri-County Metropolitan Transportation District of Oregon.	D2016–LWNO–014	TriMet Zero Emission Bus Project (TriMet-ZEB).	3,405,750

TABLE 1—FY 16 LOW OR NO EMISSION PROJECT SELECTIONS—Continued

State	Recipient	Project ID	Project description	Allocation
SC	City of Clemson dba Clemson Area Transit	D2016–LWNO–015	Clemson Area Transit Zero Emission Bus Project. (CAT–ZEB Project)	3,905,378
TX	Port Arthur Transit	D2016–LWNO–016	Port Arthur Transit Zero Emission Bus Deployment.	3,905,377
UT	Utah Department of Transportation	D2016–LWNO–017	Support Implementation of Zero Emission BRT Route to Better Serve the Park City Communities.	3,905,378
WA	City of Everett, Everett Tramsot	D2016–LWNO–018	Replacement of Diesel Buses with No emission Electric Buses.	3,358,459
WA	Pierce County Public Transportation Benefit Area Corporation.	D2016–LWNO–019	Pierce Transit Electric Bus Deployment	2,550,788
WA	The Chelan Douglas Public Transportation Benefit Area.	D2016–LWNO–020	Electrification of Link Transit's Urban Bus Fleet Using High Power On-Route Wireless Charging.	3,768,489
Total				55,000,000

[FR Doc. 2016–21430 Filed 9–6–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2016–0053]

Reports, Forms and Recordkeeping Requirements, Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the collection of information abstracted below will be forwarded to the Office of Management and Budget (OMB) for review and comment. The notice describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period was published on May 2, 2016 (81 FR 26312). No comments were received.

COMMENTS: Comments should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention NHTSA Desk Officer.

TYPE OF REQUEST: Extension of a currently approved collection.

FORM NUMBER: This collection of information uses no standard forms.

DATES: Comments must be submitted on or before October 7, 2016.

FOR FURTHER INFORMATION CONTACT: Jordan Stephens, Office of the Chief Counsel, NCC–100, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone: 202–366–8534). Please identify the relevant collection of information by referring to OMB Clearance Number 2127–0609 "Criminal Penalty Safe Harbor Provision."

SUPPLEMENTARY INFORMATION:

Agency: National Highway Traffic Safety Administration

Title: Criminal Penalty Safe Harbor Provision

OMB Control Number: 2127–0609

Frequency: We believe that there will be very few criminal prosecutions under 49 U.S.C. 30170, given its elements. Since the safe harbor related rule has been in place, the Agency has not received any reports. Accordingly, the rule is not likely to be a substantial motivating force for a submission of a proper report. *See* Summary of the Collection of Information below. We estimate that no more than one person a year would invoke this collection of information, and we do not anticipate receiving more than one report a year from any particular person.

Affected Public: This collection of information applies to any person who seeks a "safe harbor" from potential criminal liability for violating section 1001 of title 18 with respect to the reporting requirements of 49 U.S.C. 30166, with the specific intention of misleading the Secretary with respect to a safety-related defect in motor vehicles or motor vehicle equipment that caused death or serious bodily injury to an individual. Thus, the collection of information applies to the manufacturers, and any officers or employees thereof, who respond or have a duty to respond to an information provision requirement pursuant to 49 U.S.C. 30166 or a regulation, requirement, request or order issued thereunder.

Abstract: This information collection was mandated by Section 5 of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, codified at 49 U.S.C. 30170(a)(2). The information collected will provide NHTSA with information the Agency should have received previously and will also promptly provide the Agency with correct information to do its analyses, such as, for example, conducting tests or drawing conclusions about possible safety-related defects. NHTSA anticipates using this information to help it accomplish its statutory assignment of identifying safety-related defects in motor vehicles and motor vehicle equipment and, when appropriate, seeking safety recalls.

Estimated Annual Burden: As stated before, we estimate that no more than one person a year would be subject to this collection of information. Incrementally, we estimate that on average it will take no longer than two hours for a person to compile and submit the information we are requiring to be reported. Therefore, the total burden hours on the public per year is estimated to be a maximum of two hours.

Since nothing in the rule requires those persons who submit reports pursuant to this rule to keep copies of any records or reports submitted to us, recordkeeping costs imposed would be zero hours and zero costs.

Number of Respondents: We estimate that there will be no more than one per year.

Summary of the Collection of Information: Each person seeking protection from criminal penalties under 49 U.S.C. 30170 related to an improper report or failure to report is required to report the following information to NHTSA: (1) A signed and dated document that identifies (a) each previous improper report and each failure to report as required under 49 U.S.C. 30166, including a regulation, requirement, request or order issued thereunder, for which protection is sought and (b) the specific predicate under which the improper or omitted report should have been provided; and (2) the complete and correct information that was required to be submitted but was improperly submitted or was not previously submitted, including relevant documents that were not previously submitted to NHTSA or, if the person cannot do so, provide a detailed description of that information and/or the content of those documents and the reason why the individual cannot provide them to NHTSA. *See* 49 U.S.C. 30170(a)(2) and 49 CFR 578.7; *see also* 66 FR 38380 (July 24, 2001) (safe harbor final rule); 65 FR 81414 (Dec. 26, 2000) (safe harbor interim final rule).

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication.

Authority: 44 U.S.C. 3506; delegation of authority at 49 CFR 1.95.

Issued: August 30, 2016.

Paul A. Hemmersbaugh,

Chief Counsel.

[FR Doc. 2016–21426 Filed 9–6–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

[Docket Number DOT–OST–2016–0169]

Agency Request for Emergency Approval of an Information Collection

AGENCY: Bureau of Transportation Statistics (BTS), Office of the Assistant Secretary for Research and Technology (OST–R), U.S. Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), the Department of Transportation (DOT) provides notice that it will submit an information collection request (ICR) to the Office of Management and Budget (OMB) for emergency approval of a proposed information collection. Upon receiving the requested six-month emergency approval by OMB, the Bureau of Transportation Statistics (BTS), Office of the Assistant Secretary for Research and Technology (OST–R), U.S. Department of Transportation will follow the normal PRA procedures to obtain extended approval for this proposed information collection.

This collection involves information on barrier failure reporting in oil and gas operations on the Outer Continental Shelf (OCS), as referenced in recently issued Bureau of Safety and Environmental Enforcement (BSEE), U.S. Department of the Interior regulations at 30 CFR 250.730(c) (81 FR 25887, Apr. 29, 2016) and the BSEE final rule amending and updating oil and gas production safety system (30 CFR 250.803) to be published in the **Federal Register** on September 7, 2016. BTS and BSEE have entered into a memorandum of understanding (MOU) to develop an industry-wide repository of barrier failure data, analyze and aggregate information collected under this program, and publish reports that will provide BSEE, the industry, and all OCS stakeholders with essential information about failure types and modes of critical safety barriers for offshore operations.

BTS and BSEE have determined that it is in the public interest to collect and process barrier failure reports or other data deemed necessary to administer BSEE's safety program pertaining to barrier failures, under a pledge of confidentiality for statistical purposes only. The confidentiality of notices and reports submitted directly to BTS will be protected in accordance with the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA) (44 U.S.C. 3501 note), which provides substantial additional confidentiality protections than can be provided for reports submitted directly to BSEE.

Currently, reports on equipment failures are submitted directly to BSEE with limited information related to barrier failure events and root cause. Feedback from the industry during the data collection form drafting process indicates substantial reluctance to provide detailed barrier failure event information without the additional protections of CIPSEA. Reports submitted directly to BTS under CIPSEA will use a longer data collection form that includes additional essential detail about a barrier failure event such as equipment history information, certain important event data information, and root cause information. The additional detail included in the longer form is critical to comprehensively assess failures and determine appropriate exposure denominators for risk estimates, in service of BSEE's mission to protect safety and prevent environmental harm.

Emergency processing of this collection of information is needed prior to the expiration of time periods established under the PRA because the use of normal clearance procedures is reasonably likely to result in the collection of only limited data on barrier failure events during the established PRA time periods. The use of normal clearance procedures will prevent collection of this data during the established PRA time periods, which will inhibit BSEE's ability to comprehensively assess barrier failures and risks, identify barrier failure trends, and identify causes of critical safety barrier failure events.

FOR FURTHER INFORMATION CONTACT: Information related to this ICR, including applicable supporting documentation may be obtained by contacting Demetra V. Collia, Bureau of Transportation Statistics, Office of the Assistant Secretary for Research and Technology, U.S. Department of Transportation, Office of Statistical and Economic Analysis, RTS–31, E36–302, 1200 New Jersey Avenue SE., Washington, DC 20590–0001; Phone No. (202) 366–1610; Fax No. (202) 366–3383; Email: *demetra.collia@dot.gov.* Office hours are from 8:30 a.m. to 5 p.m., EST, Monday through Friday, except Federal holidays.

DATES: Comments should be submitted as soon as possible upon publication of this notice in the **Federal Register**. Comments and questions should be directed to the Office of Information and Regulatory Affairs (OIRA), Attn: OST OMB Desk Officer, 725 17th Street NW., Washington DC 20503. Comments and questions about the ICR identified below may be transmitted electronically to OIRA at *oira_submissions@omb.eop.gov*.

SUPPLEMENTARY INFORMATION:

I. The Data Collection

The Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35; as amended) and 5 CFR part 1320 require each Federal agency to obtain OMB approval to initiate an information collection activity. BTS is seeking OMB approval for the following BTS information collection activity:

Title: Barrier Failure Reporting in Oil and Gas Operations on the Outer Continental Shelf.

OMB Control Number: 2138–TBD.

Type of Review: Approval of data collection. This information collection is limited to the establishment of BTS as an authorized repository for the previously approved information collections (OMB Control Number 1014–0028, expiration 04/30/2019, and OMB Control Number 1014–0003, expiration 08/31/2019) in order to ensure the confidentiality of submissions under CIPSEA.

Respondents: BTS has entered into a MOU with BSEE to facilitate the collection of information from respondents identified in the BSEE notices for OMB Control Numbers 1014–0028 and 1014–0003. Responsibility for establishing the actual scope and burden for this collection resides with BSEE. This BTS information collection request does not create any additional burden for respondents. For the purposes of this collection BTS has identified BSEE as the sole respondent.

Number of Potential Responses: For the purposes of this collection BTS has identified BSEE as the sole respondent reporting to BTS at the annual frequency of one.

Estimated Time per Response: 60 minutes.

Frequency: Once. *Total Annual Burden:* 1 hour.

Abstract: CIPSEA can provide strong confidentiality protection for information acquired for statistical purposes under a pledge of confidentiality. CIPSEA Guidance from the Office of Management and Budget advises that a nonstatistical agency or unit (BSEE) that wishes to acquire information with CIPSEA protection may consider entering into an agreement with a Federal statistical agency or unit (BTS). BTS and BSEE have determined that it is in the public interest to collect and process the blowout preventer (BOP) failure reports required by 30 CFR 250.730(c), safety and pollution prevention equipment (SPPE) failure reports required by 30 CFR 250.803, or other data deemed necessary to administer BSEE's safety program pertaining to barrier failures under a pledge of confidentiality for statistical purposes only. BTS has agreed through an MOU with BSEE to undertake the information collection identified in the BSEE notices for OMB Control Numbers 1014–0028 and 1014–0003 in order to ensure the confidentiality of submissions under CIPSEA. Since this information collection is limited to the establishment of BTS as an authorized repository for the previously approved information collections (OMB Control Number 1014–0028, expiration 04/30/2019, and OMB Control Number 1014–0003, expiration 08/31/2019), this information collection request does not create any additional burden for respondents.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48 and 44 U.S.C. 3501 note.

II. Background

In August 2013, BTS and BSEE signed an interagency agreement (IAA) to develop and implement SafeOCS, a voluntary program for confidential reporting of 'near misses' occurring on the Outer Continental Shelf (OCS). The goal of the voluntary near miss reporting system is to provide BTS with essential information about accident precursors and other hazards associated with OCS oil and gas operations. Under the program, BTS will develop and publish aggregate reports that BSEE, the industry and all OCS stakeholders can use—in conjunction with incident reports and other sources of information—to reduce safety and environmental risks and continue building a more robust OCS safety culture.

On July 28, 2016, new BSEE regulations became effective, requiring in part, the reporting of well control barrier-related failure event and analysis information. Further, BSEE's final rule amending and updating oil and gas production safety systems regulations which require, in part, the reporting of SPPE failure event and analysis information will become effective on November 8, 2016. BSEE requested and BTS agreed to expand the scope of SafeOCS to include reports of equipment failure mandated by 30 CFR 250.730(c) or 30 CFR 250.803.

Both BTS and BSEE agree that reports of equipment failures are considered a type of precursor safety information that can be included in SafeOCS to provide a means of identifying industry-wide data trends on barrier failures or potential for barrier failures. This data collection will provide companies in the oil and gas industry a trusted means to report sensitive proprietary and safety information related to equipment failures and to foster trust in the confidential collection, handling, and storage of the raw data.

Feedback from the industry during the rulemaking and form drafting processes indicates substantial reluctance to provide detailed barrier failure event information without the additional protections of CIPSEA. Reports submitted directly to BSEE use an abbreviated data collection form that includes only limited information related to barrier failure events. Reports submitted directly to BTS use a longer data collection form that includes additional essential detail about a barrier failure event such as equipment history information, certain important event data information, and root cause information. The additional detail included in the longer form is critical to comprehensively assess failures and determine appropriate exposure denominators for risk estimates, in service of BSEE's mission to prevent safety and environmental harm.

BTS will use the data collected to establish a comprehensive source of barrier-related failure data for statistical purposes. With input from subject matter experts, BTS will process and analyze information on equipment failures, and publish results of such analyses in public reports. Such reports will provide BSEE, the industry, and all OCS stakeholders with essential information about failure types and modes of critical safety barriers for offshore operations, provide valuable information to identify and close gaps in risk management, and contribute to research and development of intervention programs aimed at preventing accidents and fatalities in the OCS.

BTS will: (1) Collect failure notices, failure analysis reports, and design change/modified procedures reports, as described in 30 CFR 250.730(c) and 30 CFR 250.803, submitted by industry operators, their contractors, original equipment manufacturers, and others employed in the oil and gas industry; (2) develop an analytical database using the reported data and other pertinent information; (3) conduct statistical analyses; (4) develop and publish aggregate public reports and other data produces; and (5) protect the confidentiality of notices and reports in accordance with BTS' own statute (49 U.S.C. 6307) and CIPSEA. In accordance with these confidentiality statutes, only statistical (aggregated) and non-identifying data will be made publicly available by BTS through its reports. BTS will not release to BSEE or any other public or private entity any information that might reveal the identity of individuals or organizations mentioned in failure notices or reports without explicit consent of the respondent and any other affected entities.

Respondents who report a barrier-related failure will be asked to fill out a form based upon the requirements of 30 CFR 250.730(c) and cited industry standards. They will also be asked to submit supplemental information and analysis as described in 30 CFR 250.730(c) or 30 CFR 250.803 and cited industry standards. Respondents will have the option to mail or submit the reports electronically to BTS. Respondents will be asked to provide information such as: (1) Name and contact information; (2) time and location of the failure event; (3) a short description of the failure event and operating conditions that existed at the time of the event; (4) contributing factors to the event; (5) results of an investigation or safety analysis report; (6) any design or procedural changes as a result of the reported equipment failure; and (7) any other information that might be useful in determining ways to prevents such failures from occurring.

BTS requests emergency processing of this information collection because the use of normal clearance procedures is likely to result in the collection of only limited data on barrier failure events during the established PRA time periods. The use of normal clearance procedures will prevent collection of this data during the established PRA time periods, which will inhibit BSEE's ability to comprehensively assess barrier failures and risks, identify barrier failure trends, and identify causes of critical safety barrier failure events.

The BSEE Well Control Rule failure data collection for BOP equipment was substantially driven by an event of major national significance, which also captured international attention. One important element of this event was the failure of BOP equipment. The event resulted in the deaths of 11 people and the largest oil spill in US history. It is in the public interest to commence immediate collection of the additional information on equipment history and important event data to enable a better understanding of underlying root causes.

III. Request for Public Comment

BTS requests comments on any aspects of this information collection request, including: (1) Ways to enhance the quality, usefulness, and clarity of the collected information; and (2) ways to minimize the collection burden without reducing the quality of the information collected, including additional use of automated collection techniques or other forms of information technology.

Patricia Hu,

Director, Bureau of Transportation Statistics, Office of the Assistant Secretary for Research and Technology, U.S. Department of Transportation.

[FR Doc. 2016–21390 Filed 9–6–16; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning estate and gift taxes; qualified disclaimers of property (Section 25.2518–2(b)).

DATES: Written comments should be received on or before November 7, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Sara Covington, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Estate and Gift Taxes; Qualified Disclaimers of Property.

OMB Number: 1545–0959.

Regulation Project Number: TD 8095.

Abstract: Internal Revenue Code section 2518 allows a person to disclaim an interest in property received by gift or inheritance. The interest is treated as if the disclaimant never received or transferred such interest for Federal gift tax purposes. A qualified disclaimer must be in writing and delivered to the transferor or trustee.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 2,000.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 23, 2016.

Tuawana Pinkston,

IRS Supervisory Tax Analyst.

[FR Doc. 2016–21387 Filed 9–6–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8038–T

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8038–T, Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate.

DATES: Written comments should be received on or before November 7, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the collection tools should be directed to Sara Covington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate.

OMB Number: 1545–1219.

Form Number: 8038–T.

Abstract: Form 8038–T is used by issuers of tax exempt bonds to report and pay the arbitrage rebate and to elect and/or pay various penalties associated with arbitrage bonds. The issuers include state and local governments.

Current Actions: There are no changes being made to Form 8038–T at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or tribal governments.

Estimated Number of Respondents: 2,500.

Estimated Time per Respondent: 23 hrs., 10 min.

Estimated Total Annual Reporting Burden Hours: 57,900.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 29, 2016.

Tuawana Pinkston,

IRS Supervisory Tax Analyst.

[FR Doc. 2016–21394 Filed 9–6–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning rescission request procedures.

DATES: Written comments should be received on or before November 7, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Kerry Dennis at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Revenue Procedure Regarding 6707/6707A Rescission Request Procedures.

OMB Number: 1545–2047.

Revenue Procedure Number: Revenue Procedure 2007–21.

Abstract: This revenue procedure provides guidance to persons who are assessed a penalty under section 6707A or 6707 of the Internal Revenue Code, and who may request rescission of those penalties from the Commissioner.

Current Actions: There are no changes being made to this revenue procedure.

Type of Review: Extension of a previously approved collection.

Affected Public: Individuals or households, business or other for-profit.

Estimated Number of Respondents: 859.

Estimated Time per Respondent: 0.5 hours.

Estimated Total Annual Burden Hours: 430.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 24, 2016.

Tuawana Pinkston,

IRS Reports Clearance Officer.

[FR Doc. 2016–21384 Filed 9–6–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2006–97

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2006–97, Taxation and Reporting of REIT Excess Inclusion Income.

DATES: Written comments should be received on or before November 7, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the collection tools should be directed to Sara Covington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION: Currently, the IRS is seeking comments concerning Notice 2006–97.

Title: Taxation and Reporting of REIT Excess Inclusion Income.

OMB Number: 1545–2036.

Notice Number: Notice 2006–97.

Abstract: This notice requires certain REITs, RICS, partnerships and other entities that have excess inclusion income to disclose the amount and character of such income allocable to their record interest owners. The record interest owners need the information to properly report and pay taxes on such income.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Time per Respondent: 2 hr.

Estimated Total Annual Burden Hours: 100.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 23, 2016.

Tuawana Pinkston,

IRS Supervisory Tax Analyst.

[FR Doc. 2016–21386 Filed 9–6–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning qualified conservation contributions.

DATES: Written comments should be received on or before November 7, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Kerry Dennis at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Qualified Conservation Contributions.

OMB Number: 1545–0763. Regulation Project Number: TD 8069.

Abstract: Internal Revenue Code section 170(h) describes situations in which a taxpayer is entitled to a deduction for a charitable contribution for conservation purposes of a partial interest in real property. This regulation requires a taxpayer claiming a deduction to maintain records of (1) the fair market value of the underlying property before and after the donation and (2) the conservation purpose of the donation.

Current Actions: There are no changes being made to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and Federal, State, local or tribal governments.

Estimated Number of Respondents: 1,000.

Estimated Time per Respondent: 1 hour 15 minutes.

Estimated Total Annual Burden Hours: 1,250.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 24, 2016.

Tuawana Pinkston,

OMB Reports Clearance Officer.

[FR Doc. 2016–21385 Filed 9–6–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8610 and Schedule A (Form 8610)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8610, Annual Low-Income Housing Credit Agencies Report, and Schedule A (Form 8610), Carryover Allocation of Low-Income Housing Credit.

DATES: Written comments should be received on or before November 7, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to LaNita Van Dyke, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Form 8610, Annual Low-Income Housing Credit Agencies Report, and Schedule A (Form 8610), Carryover Allocation of Low-Income Housing Credit.

OMB Number: 1545–0990.

Form Number: Form 8610 and Schedule A (Form 8610).

Abstract: State housing credit agencies (Agencies) are required by Code section 42(l)(3) to report annually the amount of low-income housing credits that they allocated to qualified buildings during the year. Agencies report the amount allocated to the building owners and to the IRS in Part I of Form 8609. Carryover allocations are reported to the Agencies in carryover allocation documents. The Agencies report the carryover allocations to the IRS on Schedule A (Form 8610). Form 8610 is a transmittal and reconciliation document for Forms 8609, Schedule A (Form 8610), binding agreements, and election statements.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or tribal governments.

Estimated Number of Respondents: 1,353.

Estimated Time per Respondent: 4 hours, 58 minutes.

Estimated Total Annual Burden Hours: 6,738.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 30, 2016.

Tuawana Pinkston,

Supervisory Tax Analyst.

[FR Doc. 2016–21392 Filed 9–6–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Information Collection; Comment Request

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before November 7, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue

Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, or copies of the information collection and instructions, or copies of any comments received, contact LaNita Van Dyke, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Lanita.VanDyke@irs.gov*.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and the Internal Revenue Service, as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to take this opportunity to comment on the proposed or continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*).

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments will become a matter of public record. Please do not include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether the collection of information is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Currently, the IRS is seeking comments concerning the following forms, and reporting and record-keeping requirements:

Title: Guidance under Section 664(c) Regarding the Effect of Unrelated Business Taxable Income on Charitable Remainder Trusts.

Title: Definition of an S Corporation.

OMB Number: 1545–0731.

Regulation Project Number: T.D. 8600.

Abstract: This regulation provides the procedures and the statements to be filed by certain individuals for making the election under Internal Revenue Code section 136(d)(2), the refusal to consent to the election, or the revocation of that election. The statements required to be filed are used to verify that taxpayers are complying with requirements imposed by Congress under subchapter S.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 2,010.

Estimated Time per Respondent: .5 hour.

Estimated Total Annual Burden Hours: 1,005.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Approved: August 26, 2016.

Tuawana Pinkston,

IRS Reports Clearance Officer.

[FR Doc. 2016–21388 Filed 9–6–16; 8:45 am]

BILLING CODE 4830–01–P

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Part II

Department of Transportation

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107, 171, 172, et al.
Hazardous Materials: Harmonization With International Standards (RRR);
Proposed Rule

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107, 171, 172, 173, 175, 176, 178, and 180

[Docket No. PHMSA–2015–0273 (HM–215N)]

RIN 2137–AF18

Hazardous Materials: Harmonization With International Standards (RRR)

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to amend the Hazardous Materials Regulations (HMR) to maintain consistency with international regulations and standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements. These revisions are necessary to harmonize the HMR with recent changes made to the International Maritime Dangerous Goods Code, the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air, and the United Nations Recommendations on the Transport of Dangerous Goods—Model Regulations. Additionally, PHMSA proposes several amendments to the HMR that result from coordination with Canada under the U.S.-Canada Regulatory Cooperation Council.

DATES: Comments must be received by November 7, 2016.

ADDRESSES: You may submit comments by any of the following methods:

Federal Rulemaking Portal: http://www.regulations.gov. Follow the on-line instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management System; U.S. Department of Transportation, Docket Operations, M–30, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

Hand Delivery: To U.S. Department of Transportation, Docket Operations, M–30, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001 between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

Instructions: Include the agency name and docket number PHMSA–2015–0273 (HM–215N) or RIN 2137–AF18 for this rulemaking at the beginning of your comment. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information provided. If sent by mail, comments must be submitted in duplicate. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard.

Privacy Act: Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://www.regulations.gov.*

Docket: You may view the public docket through the Internet at *http://www.regulations.gov* or in person at the Docket Operations office at the above address (See **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Steven Webb, Office of Hazardous Materials Standards or Aaron Wiener, International Standards, telephone (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., 2nd Floor, Washington, DC 20590–0001.

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I. Executive Summary

The Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to amend the Hazardous Materials Regulations (HMR; 49 CFR parts 171 to 180) to maintain consistency with international regulations and standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements. This rulemaking project is part of our ongoing biennial process to harmonize the HMR with international regulations and standards.

In this NPRM, PHMSA proposes to amend the HMR to maintain consistency with various international standards. The following are some of the more noteworthy proposals set forth in this NPRM:

- *Incorporation by Reference:* PHMSA proposes to incorporate by reference the newest versions of various international hazardous materials standards, including the 2017–2018 Edition of the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions); Amendment 38–16 to the International Maritime Dangerous Goods Code (IMDG Code); the 19th Revised Edition of the United Nations Recommendations on the Transport of Dangerous Goods (UN Model Regulations); the 6th Revised Edition of the United Nations Manual of Tests and Criteria; and the 6th Revised Edition of the Globally Harmonized System of Classification and Labelling of Chemicals. Additionally, we propose to update our incorporation by reference of the Canadian Transportation of Dangerous Goods (TDG) Regulations to include SOR/2014–152 and SOR/2014–159 published July 2, 2014; SOR/2014–159 Erratum published July 16, 2014; SOR/2014–152 Erratum published August 27, 2014; SOR/2014–306 published December 31, 2014; SOR/2014–306 Erratum published January 28, 2015; and SOR/2015–100 published May 20, 2015. Finally, in this NPRM, PHMSA proposes the adoption of updated International Organization for Standardization (ISO) standards.
- *Hazardous Materials Table (HMT):* PHMSA proposes amendments to the § 172.101 Hazardous Materials Table (HMT) consistent with recent changes in the Dangerous Goods List of the 19th Revised Edition of the UN Model Regulations, the IMDG Code, and the

ICAO Technical Instructions. Specifically, we propose amendments to the HMT to add, revise, or remove certain proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, bulk packaging requirements, and passenger and cargo aircraft maximum quantity limits.

- *Provisions for Polymerizing Substances:* PHMSA proposes to revise the HMT consistent with amendments adopted into the UN Model Regulations. Specifically, we propose to include into the HMT four new Division 4.1 entries for polymerizing substances and to add into the HMR defining criteria, authorized packagings, and safety requirements including, but not limited to, stabilization methods and operational controls.
- *Modification of the Marine Pollutant List:* PHMSA proposes to modify the list of marine pollutants in appendix B to § 172.101. The HMR maintain this list as the basis for regulating substances toxic to the aquatic environment and allow use of the criteria in the IMDG Code if a listed material does not meet the criteria for a marine pollutant. PHMSA periodically updates this list based on changes to the IMDG Code and evaluation of listed materials.
- *Packaging Requirements for Water-Reactive Materials Transported by Vessel:* PHMSA proposes various amendments to packaging requirements for vessel transportation of water-reactive substances consistent with requirements in the IMDG Code. The amendments include changes to the packaging requirements to require certain commodities to have hermetically sealed packaging and to require other commodities—when packed in flexible, fiberboard, or wooden packagings—to have sift-proof and water-resistant packaging or packaging fitted with a sift-proof and water-resistant liner.
- *Hazard Communication Requirements for Lithium Batteries:* PHMSA proposes to revise hazard communication requirements for shipments of lithium batteries consistent with changes adopted in the 19th Revised Edition of the UN Model Regulations. Specifically, PHMSA proposes to adopt a new lithium battery label in place of the existing Class 9 label; to amend the existing marking requirements for small lithium battery shipments in § 173.185(c) to incorporate a new standard lithium battery mark for use across all modes;[1] to delete the documentation requirement in § 173.185(c) for shipments of small lithium cells and batteries; and to require the lithium battery mark be applied to each package containing small lithium cells or batteries contained in equipment when there are more than four lithium cells or two lithium batteries installed in the equipment or where there are more than two packages in the consignment.
- *Engine, Internal Combustion/ Machinery, Internal Combustion:* PHMSA proposes to harmonize the HMT proper shipping names utilized for the transportation of engines and machinery containing engines with those in the UN Model Regulations. Additionally, PHMSA proposes harmonization with the IMDG Code for domestic vessel shipments of engines, internal combustion, and machinery containing combustion engines. Under the proposals in this NPRM, the existing "Engine, internal combustion" entries would be assigned their own UN numbers and hazard class based on the type of fuel (*e.g.* a flammable liquid powered engine is assigned a proper shipping name with a Class 3 designation). Existing requirements and exceptions for the transportation of engines and machinery containing engines transported by road, rail, and aircraft would remain unchanged. PHMSA is, however, proposing to harmonize the transportation requirements for transportation by vessel, which includes varying degrees of hazard communication based on the type of fuel, amount of fuel, and capacity of the fuel tank.
- *U.S.-Canada Regulatory Cooperation Council (RCC) Proposals:* PHMSA proposes several amendments to the HMR resulting from coordination with Canada under the U.S.-Canada RCC. Specifically, we propose provisions for recognition of Transport Canada (TC) cylinders, equivalency certificates (permit for equivalent level of safety), and inspection and repair of cargo tanks. These changes would be made in conjunction with Transport Canada proposing similar regulatory changes that will provide reciprocal recognition of DOT cylinders and DOT special permits.

If adopted in a final rule, the amendments proposed in this NPRM will result in minimal burdens on the regulated community. The benefits achieved from their adoption include enhanced transportation safety resulting from the consistency of domestic and international hazard communication and continued access to foreign markets by U.S. manufacturers of hazardous materials. PHMSA anticipates that most of the amendments in this NPRM will result in cost savings and will ease the regulatory compliance burden for shippers engaged in domestic and international commerce, including trans-border shipments within North America.

PHMSA solicits comment from the regulated community on these amendments and others proposed in this NPRM pertaining to need, benefits and costs of international harmonization, impact on safety, and any other relevant concerns. In addition, PHMSA solicits comment regarding approaches to reducing the costs of this rule while maintaining or increasing the benefits. In its preliminary analysis, PHMSA concluded that the aggregate benefits of the amendments proposed in this NPRM justify their aggregate costs. Nonetheless, PHMSA solicits comment on specific changes (*i.e.*, greater flexibility with regard to a particular amendment) that might improve the rule.

II. Background

Federal law and policy strongly favor the harmonization of domestic and international standards for hazardous materials transportation. The Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*, "Federal hazmat law") directs PHMSA to participate in relevant international standard-setting bodies and promotes consistency of the HMR with international transport standards to the extent practicable. Although Federal hazmat law permits PHMSA to depart from international standards to promote safety or other overriding public interest, it otherwise encourages domestic and international harmonization (see 49 U.S.C. 5120).

In a final rule published December 21, 1990 (Docket HM–181; 55 FR 52402), PHMSA's predecessor—the Research and Special Programs Administration (RSPA)—comprehensively revised the HMR for international harmonization with the UN Model Regulations. The UN Model Regulations constitute a set of recommendations issued by the United Nations Sub-Committee of Experts (UNSCOE) on the Transport of Dangerous Goods (TDG) and the Globally Harmonized System of Classification and Labelling of Chemicals (GHS). The UN Model Regulations are amended and updated biennially by the UNSCOE and serve as the basis for national, regional, and international modal regulations, including the IMDG Code and the ICAO Technical Instructions.

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[1] Small cells and batteries for the purposes of this rulemaking are a lithium metal cell containing not more than 1 gram of lithium metal, a lithium metal battery containing not more than 2 grams of lithium metal, a lithium ion cell not more than 20 Watt-hours (Wh), and a lithium ion battery not more than 100 Wh (49 CFR 173.185(c) and Section II of Packing Instructions 965 and 968 in the ICAO Technical Instructions).

Since publication of the 1990 rule, PHMSA has issued 11 additional international harmonization rulemakings under the following dockets: HM–215A [59 FR 67390; Dec. 29, 1994]; HM–215B [62 FR 24690; May 6, 1997]; HM–215C [64 FR 10742; Mar. 5, 1999]; HM–215D [66 FR 33316; June 21, 2001]; HM–215E [68 FR 44992; July 31, 2003]; HM–215G [69 FR 76044; Dec. 20, 2004]; HM–215I [71 FR 78595; Dec. 29, 2006]; HM–215J [74 FR 2200; Jan. 14, 2009]; HM–215K [76 FR 3308; Jan. 19, 2011]; HM–215L [78 FR 987; Jan. 7, 2013]; and HM–215M [80 FR 1075; Jan. 8, 2015]. These rulemakings were based on biennial updates of the UN Model Regulations, the IMDG Code, and the ICAO Technical Instructions.

Harmonization becomes increasingly important as the volume of hazardous materials transported in international commerce grows. It not only facilitates international trade by minimizing the costs and other burdens of complying with multiple or inconsistent safety requirements for transportation of hazardous materials, but it also enhances safety when the international standards provide an appropriate level of protection. PHMSA actively participates in the development of international standards for the transportation of hazardous materials and promotes the adoption of standards consistent with the HMR. When considering the harmonization of the HMR with international standards, PHMSA reviews and evaluates each amendment on its own merit, on its overall impact on transportation safety, and on the economic implications associated with its adoption. Our goal is to harmonize with international standards without diminishing the level of safety currently provided by the HMR or imposing undue burdens on the regulated community.

Based on recent review and evaluation, PHMSA proposes to revise the HMR to incorporate changes from the 19th Revised Edition of the UN Model Regulations, Amendment 38–16 to the IMDG Code, and the 2017–2018 Edition of the ICAO Technical Instructions, which become effective January 1, 2017.[2]

In addition, PHMSA proposes to incorporate by reference the newest editions of various international standards. These standards incorporated by reference are authorized for use, under specific circumstances, in part 171 subpart C of the HMR. This proposed rule is necessary to incorporate revisions to the international standards and, if adopted in the HMR, will be effective January 1, 2017.

Possible Interim Final Rule

The changes to the international standards will take effect on January 1, 2017. Therefore, it is essential that a final rule incorporating these standards by reference be published no later than December 31, 2016 with an effective date of January 1, 2017. Otherwise, U.S. companies—including numerous small entities competing in foreign markets—will be at an economic disadvantage because of their need to comply with a dual system of regulations (specifically, the HMR, UN Model Regulations, and ICAO Technical Instructions). To this end, if it appears a final rule under this docket will not be published prior to January 1, 2017, PHMSA will publish a bridging document in the form of an interim final rule to amend the HMR by incorporating the 19th Revised Edition of the UN Recommendations and the 2017–2018 Edition of the ICAO Technical Instructions.

With regard to Amendment 38–16 of the IMDG Code, the International Maritime Organization (IMO) approved an implementation date of January 1, 2018. The current edition of the IMDG Code (Amendment 37–14) remains in effect through 2017; therefore, we will not include the newest version of the IMDG Code in any bridging document. The proposed incorporation by reference of the newest edition of the IMDG Code and all other changes proposed in this NPRM would be addressed in a subsequent final rule also under this docket [PHMSA–2015–0273 (HM–215N)]. Accordingly, any interim final rule will only incorporate by reference editions of the international standards that become effective on January 1, 2017.

III. Incorporation by Reference Discussion Under 1 CFR Part 51

The UN Recommendations on the Transport of Dangerous Goods—Model Regulations, Manual of Tests and Criteria, and Globally Harmonized System of Classification and Labelling of Chemicals, as well as all of the Transport Canada Clear Language Amendments, are free and easily accessible to the public on the internet, with access provided through the parent organization Web sites. The ICAO Technical Instructions, IMDG Code, and all ISO references are available for interested parties to purchase in either print or electronic versions through the parent organization Web sites. The price charged for those not freely available helps to cover the cost of developing, maintaining, hosting, and accessing these standards. The specific standards are discussed at length in the ''Section-by-Section Review'' for § 171.7.

IV. Harmonization Proposals in This NPRM

In addition to various other revisions to the HMR, PHMSA proposes the following amendments to harmonize the HMR with the most recent revisions to the UN Model Regulations, ICAO Technical Instructions, and IMDG Code, as well as several amendments resulting from coordination with Canada under the U.S.-Canada RCC:

- *Incorporation by Reference:* PHMSA proposes to incorporate by reference the latest editions of various international transport standards including the 2017–2018 Edition of the ICAO Technical Instructions; Amendment 38–16 of the IMDG Code; the 6th Revised Edition of the UN Manual of Tests and Criteria; the 6th Revised Edition of the United Nations Globally Harmonized System of Classification and Labelling of Chemicals; and the 19th Revised Edition of the UN Model Regulations. Additionally, we are proposing to update our incorporation by reference of the Canadian TDG Regulations to include SOR/2014–152 and SOR/2014–159 published July 2, 2014; SOR/2014–159 Erratum published July 16, 2014; SOR/2014–152 Erratum published August 27, 2014; SOR/2014–306 published December 31, 2014; SOR/2014–306 Erratum published January 28, 2015; and SOR/2015–100 published May 20, 2015. This incorporation by reference augments the broad reciprocity provided in § 171.12 where the HMR allow the use of the TDG Regulations under certain conditions when transporting hazardous materials to or from Canada by highway or rail. Finally, PHMSA proposes the incorporation by reference of new and updated ISO standards.
- *Hazardous Materials Table (HMT):* PHMSA proposes amendments to the HMT to add, revise, or remove certain proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, bulk packaging requirements, vessel stowage and segregation requirements, and passenger and cargo aircraft maximum quantity limits.
- *Packaging Requirements for Water-Reactive Materials Transported by*

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[2] Amendment 38–16 to the IMDG Code may be voluntarily applied on January 1, 2017; however, the previous amendment remains effective through December 31, 2017.

Vessel: PHMSA proposes various amendments to packaging requirements for vessel transportation of water-reactive substances. The amendments include changes to the packaging requirements to require certain commodities to have hermetically sealed packaging and to require other commodities—when packed in flexible, fiberboard, or wooden packagings—to have sift-proof and water-resistant packaging or packaging fitted with a sift-proof and water-resistant liner. These proposed changes are consistent with IMDG Code requirements.

- *Hazard Communication Requirements for Lithium Batteries:* PHMSA proposes to revise hazard communication requirements for lithium batteries consistent with changes adopted in the 19th Revised Edition of the UN Model Regulations. Specifically, PHMSA proposes to adopt a new lithium battery label in place of the existing Class 9 label; to amend the existing marking requirements for small lithium battery shipments in § 173.185(c) to incorporate a new standard lithium battery mark for use across all modes; to remove the documentation requirement in § 173.185(c) for shipments of small lithium cells and batteries; and to amend the exception for small lithium cells and batteries requiring the lithium battery mark from the current applicability of "no more than four lithium cells or two lithium batteries installed in the equipment" to "no more than four lithium cells or two lithium batteries contained in equipment, where there are not more than two packages in the consignment."
- *Engine, Internal Combustion/Machinery, Internal Combustion:* PHMSA proposes to harmonize the HMT entries for the transportation of engines and machinery containing engines with those in the UN Model Regulations. Additionally, PHMSA proposes harmonization with the IMDG Code for domestic vessel shipments of engines, internal combustion, and machinery containing combustion engines. Under the proposals in this NPRM, the existing "Engine, internal combustion" entries would be assigned their own UN numbers and hazard class based on the type of fuel (*e.g.,* a flammable liquid powered engine is assigned a proper shipping name with a Class 3 designation). Existing requirements and exceptions for the transportation of engines and machinery containing engines transported by road, rail, and aircraft would remain unchanged. PHMSA is, however, proposing to harmonize the transportation requirements for transportation by vessel, which includes varying degrees of hazard communication based on the type of fuel, amount of fuel, and capacity of the fuel tank.
- *U.S.-Canada Regulatory Cooperation Council (RCC) Proposals:* The Prime Minister of Canada and the President of the United States created the U.S.-Canada Regulatory Cooperation Council in 2011. Through this effort, the United States and Canada strive to strengthen regulatory cooperation and reciprocity to enhance economic competitiveness while maintaining high standards of health, safety, and environmental protection. DOT, together with Transport Canada, have collaborated to develop a regulatory partnership statement and work plan, both of which can be viewed at *http://trade.gov/rcc.* Stakeholder input (which can be viewed at *www.regulations.gov* under Docket No. PHMSA 2012–0058), as well as internal and mutual regulatory review, help determine work plan initiatives and areas where enhanced regulatory cooperation and reciprocity might be feasible and beneficial provided there is no compromise in safety. Three primary initiatives identified in the work plan are the recognition of inspection and repair of cargo tanks under the U.S. requirements for highway transport, the mutual recognition of standard pressure receptacles (cylinders), and mutual recognition of DOT special permits and Transport Canada equivalency certificates.

—PHMSA proposes to address the cargo tank initiative by authorizing facilities in Canada that hold a Certificate of Authorization for repair from a provincial pressure vessel jurisdiction to repair DOT specification cargo tanks that are used to transport hazardous materials in the United States. PHMSA further proposes to except those facilities from registering in accordance with part 107 subpart F of the HMR provided they are registered in accordance with the Transport Canada TDG Regulations. This proposed authority and exception would provide carriers with additional access to repair facilities in Canada without jeopardizing the DOT specification of a cargo tank and broaden reciprocity with Canada, which already recognizes repairs of TC specification cargo tanks performed by authorized and registered facilities in the United States.

—PHMSA proposes to address the cylinder initiative by authorizing the filling, requalification, and use of cylinders manufactured in accordance with the TDG Regulations that have a corresponding DOT specification in the HMR. Mutual recognition of cylinder specifications and requalification inspections will mean cylinder users that frequently conduct business that crosses the border will not need to maintain two sets of substantially similar cylinders.

—PHMSA proposes to address the equivalency certificate initiative by amending the HMR to allow shipments offered in accordance with an equivalency certificate to transit to their first destination without having to apply for a duplicative special permit from PHMSA.

V. Amendments Not Being Considered for Adoption in This NPRM

PHMSA's goal in this rulemaking is to maintain consistency between the HMR and the international requirements. We are not striving to make the HMR identical to the international regulations but rather to remove or avoid potential barriers to international transportation.

PHMSA proposes changes to the HMR based on amendments adopted in the 19th Revised Edition of the UN Model Regulations, the 2017–2018 Edition of the ICAO Technical Instructions, and Amendment 38–16 to the IMDG Code. We are not, however, proposing to adopt all of the amendments made to the various international standards into the HMR.

In many cases, amendments to the international recommendations and regulations are not adopted into the HMR because the framework or structure makes adoption unnecessary. In other cases, we have addressed, or will address, the amendments in separate rulemaking proceedings. If we have inadvertently omitted an amendment in this NPRM, we will attempt to include the omission in the final rule; however, our ability to make changes in a final rule is limited by requirements of the Administrative Procedure Act (5 U.S.C. 553). In some instances, we can adopt a provision inadvertently omitted in the NPRM if it is clearly within the scope of changes proposed in the notice. Otherwise, in order to provide opportunity for notice and comment, the change must first be proposed in an NPRM.

The following is a list of notable amendments to the international regulations that PHMSA is not considering for adoption in this NPRM:

- *Large Salvage Cylinders:* The 17th Revised Edition of the UN Model Regulations includes guidelines for Competent Authorities to use when issuing approvals for salvage pressure receptacles. These revisions are found in Chapter 1.2, 4.1, 5.4, and 6.2 of the UN Model Regulations. Specifically, these requirements address the packaging, hazard communication, and safe transport of salvage pressure receptacles, also known as salvage cylinders in the United States. The 19th Revised Edition of the UN Model Regulations includes changes to the definition and packaging allowances for salvage cylinders. These changes authorize the use of a large salvage cylinder with a water capacity not exceeding 3,000 L to transport a cylinder with a water capacity up to 1,000 L. Salvage cylinders still require approval by appropriate Competent Authorities.

The HMR currently address the packaging, hazard communication, and safe transport of salvage cylinders in § 173.3(d) and do not require approval of the Associate Administrator to do so. PHMSA considers the current salvage cylinder requirements in the HMR to provide a sufficient level of safety and adequately address the shipment of damaged and defective cylinders. It is appropriate that larger salvage cylinders go through the existing approval process. Therefore, PHMSA is not proposing changes to the current HMR requirements for salvage cylinders.

- *Large Packagings for Waste Aerosols:* The 19th Revised Edition of the UN Model Regulations includes changes to the large packaging requirements for waste aerosols. The most notable change was to the packing group (PG) performance level required for large packagings transporting waste aerosols—from PG III to PG II. The HMR do not currently authorize the use of large packagings for aerosols. Therefore, PHMSA is not proposing changes to the current HMR requirements for large packagings for waste aerosols.
- *Table Tennis Balls:* The 19th Revised Edition of the UN Model Regulations includes a special provision assigned to "UN 2000, Celluloid" that excepts table tennis balls made of celluloid from the requirements of the Model Regulations if the total net mass of each table tennis ball does not exceed 3 grams and the net mass of table tennis balls does not exceed 500 grams per package. In a previously issued letter of interpretation (Ref. No. 14–0141), PHMSA stated that "it is the opinion of this office that the entry for UN 2000 Celluloid only applies when the material is in a pre-manufactured state *i.e.* blocks, rod, rolls, sheets, tubes etc." We further stated: "Based on the information provided in your letter, including form and quantity of celluloid contained in the table tennis balls, it is our determination the table tennis balls are not in a quantity and form that pose an unreasonable risk to health, safety or property during transportation and, therefore, are not subject to regulation under the HMR."

PHMSA maintains our position as stated in the letter of interpretation (Ref. No. 14–0141) that table tennis balls are not subject to the requirements of the HMR and that the "UN 2000, Celluloid" entry only applies when the material is in a pre-manufactured state (*i.e.* blocks rod, rolls, sheets, tubes, etc). Therefore, PHMSA is not proposing changes to the current HMR requirements to provide an exception for UN 2000.

- *IMO Portable Tank Marking:* Amendment 38–16 to the IMDG Code includes an amendment to require IMO portable tanks manufactured before January 1, 2003, to be marked with an indication of the portable tank instruction for which it meets the minimum test pressure, minimum shell thickness, pressure relief requirements, and bottom opening requirements (*i.e.*, the appropriate portable tank instruction). This change was made to clarify that the existing requirement for marking portable tanks with the portable tank instruction either on the tank itself or the tank data plate also applied to older IMO type portable tanks manufactured before January 1, 2003. PHMSA did not adopt the requirement for portable tanks to be marked with an indication of the portable tank instruction to which they comply when this requirement was first introduced. Therefore, PHMSA is not proposing changes to the current HMR requirements for IMO type portable tank markings. PHMSA notes, however, that portable tanks utilized in international transportation will need to be marked with an indication of an appropriate portable tank instruction.
- *Classification Inconsistencies:* The 19th Revised Edition of the UN Model Regulations includes text to address situations in which a consignor who is aware, on the basis of test data, that a substance listed by name in column 2 of the Dangerous Goods List in Chapter 3.2 of the UN Model Regulations meets classification criteria for a hazard class or division that is not identified in the list, may with the approval of the competent authority consign the substance:

—Under the same UN number and name but with additional hazard communication information as appropriate to reflect the additional subsidiary risk(s) (*e.g.*, documentation, label, placard) provided that the primary hazard class remains unchanged and that any other transport conditions (*e.g.*, limited quantity, packing and tank provisions) that would normally apply to substances possessing such a combination of hazards are the same as those applicable to the substance listed; or

—Under the most appropriate generic or n.o.s. entry reflecting all hazards.

The HMR, in §§ 172.402(a)(2) and 172.202(a)(3), allow and in most cases require hazardous materials exhibiting an additional subsidiary hazard to be labeled with the subsidiary hazard and to have the additional hazard described on shipping papers.

As detailed in the definition of Competent Authority Approval in § 107.1, specific regulations in subchapter A or C of the HMR are considered Competent Authority Approvals. PHMSA generally does not issue Competent Authority Approvals for situations already addressed by the HMR. Therefore, PHMSA is not proposing such changes to the current HMR requirements. Although PHMSA is not incorporating language specifically requiring a Competent Authority Approval in situations where a consignor has determined a substance has a different subsidiary risk than those identified in the HMT, we maintain the power to do so in order to facilitate commerce in situations where other competent authorities or carriers require such a document be provided.

- *Filling Procedures for UN Pressure Receptacles:* The 19th Revised Edition of the UN Model Regulations includes text in P200 requiring the filling of pressure receptacles to be carried out by qualified staff using appropriate equipment and procedures. These procedures are described as including checks of the following: conformity of receptacles and accessories with the UN Model Regulations, compatibility of the cylinder with the product to be transported, absence of damage that might affect safety, compliance with the degree or pressure of filling, and accuracy of marks and identification. Additionally, five ISO standards concerning inspection and filling of various cylinders were incorporated into P200. Compliance with these filling procedures is considered met if the appropriate ISO standard is applied.

The existing HMR requirements for filling procedures for pressure receptacles provide a sufficient level of safety and adequately address filling requirements for pressure vessels. Therefore, PHMSA is not proposing changes to the current HMR requirements for the filling of pressure receptacles nor the adoption of any of the five ISO standards applicable to filling conditions and inspections.

- *Intentionally Infected Animals:* The 2017–2018 ICAO Technical Instructions adopted changes to the classification framework for infected live animals and animal materials. These changes are intended to support consistent classification for infected animals and animal materials. The issue was brought to the attention of the UN Sub-Committee at its 48th session, but they were not able to ascertain the impact of the changes made to the ICAO Technical Instructions or if further changes were necessary to the UN Model Regulations. The representative from ICAO who presented the paper noted they would come back with an additional paper and clarifications at the next session. As work at the UN Sub-Committee is still ongoing, PHMSA is not proposing changes to the current HMR requirements for the classification or transportation of infected live animals or animal materials at this time.
- *Special Aircraft Operations:* The 2017–2018 ICAO Technical Instructions adopted changes to the general exceptions for hazardous materials carried by an aircraft in special aircraft operations (*e.g.,* air ambulance, search and rescue). These changes are to clarify that hazardous materials involved in these special aircraft operations for related purposes (*e.g.,* training flights and positioning flights prior to or after maintenance) are excepted from the ICAO Technical Instructions as stated in Part 1, Chapter 1. On June 2, 2016, PHMSA published a final rule [Docket No. PHMSA–2013–0225 (HM–218H); 81 FR 35483] that revised § 175.1(d) (formerly § 175.9(b)(4)) to clarify that staging operations and other operations related to dedicated air ambulance, firefighting, or search and rescue operations are intended to be excepted from the HMR when in compliance with the [Federal Aviation Regulations] (FAR)." Accordingly, PHMSA and the Federal Aviation Administration (FAA) believe that the current special aircraft operation's provisions in § 175.1(d) sufficiently provide the flexibility to allow for these types of flight activities (*e.g.,* training flights and positioning flights prior to or after maintenance). Therefore, PHMSA is not proposing changes to the current HMR requirements for special aircraft operations.
- *Enhanced Safety Provisions for Lithium Batteries Transported by Aircraft:* The 2015–2016 Edition of the ICAO Technical Instructions adopted enhanced safety provisions for lithium batteries transported by aircraft, effective April 1, 2016. These amendments (1) prohibit the transport of lithium ion cells and batteries as cargo on passenger aircraft; (2) require all lithium ion cells and batteries to be shipped at not more than a 30 percent state of charge on cargo-only aircraft; and (3) limit the use of alternative provisions for small lithium cell or battery shipments under 49 CFR 173.185(c). PHMSA is considering adopting these amendments in a separate rulemaking. Further information is available in the docket for this rulemaking [PHMSA–2016–0014].
- *Sterilization Devices Containing Nitrogen Tetroxide or Nitric Oxide:* The 2017–2018 ICAO Technical Instructions adopted special provision A211 to allow for the transport of sterilization devices that contain small quantities of "UN 1067, Nitrogen dioxide" and "UN 1660, Nitric oxide, compressed" by both passenger and cargo aircraft. We are not proposing incorporation of ICAO special provision A211 at this time.

While we did not oppose the adoption of this provision at ICAO, we did so recognizing that the transport environment and infrastructure is much different in parts of the world outside of the United States; and that consistent with our harmonization rulemaking considerations we would assess how best to address this topic within the HMR. During the time these amendments were being considered by ICAO, we received a special permit application that detailed more specific information than was available during the ICAO deliberations. Additionally, PHMSA received a petition for rulemaking (P–1672) requesting PHMSA harmonize with the recently adopted ICAO TI provisions for sterilization devices. Based on the lack of broad applicability, the technically specific nature of these devices and packaging systems, the significant toxicity hazard and corresponding risk to air transport, and the benefit of considering additional operational controls available to mitigate risk, it is our determination that transport in accordance with the provisions of ICAO special provision A211 are more suitably addressed through PHMSA's Special Permit program.

- *Cylinders Containing Gases for Use in Fire Extinguishers or Stationary Fire-Fighting Installations:* In some cases cylinders that are not a permanent component of a fire extinguisher or a stationary fire-fighting installation are transported separately from these fire extinguishers (*e.g.,* prior to their use in the fire extinguisher or stationary fire-fighting installation and for filling). At the 44th session of the UN Sub-Committee, it was agreed that when the cylinder containing the compressed gas is transported separately, it should be subject to the same requirements as conventional cylinders.

On July 26, 2016, PHMSA published a NPRM [Docket No. PHMSA–2011–0140 (HM–234); 81 FR 48977] proposing to revise the § 173.309 introductory text to include cylinders used as part of a fire suppression system as a cylinder type authorized for transport in accordance with the HMT entry for fire extinguishers. The HM–234 NPRM notes the controls detailed in § 173.309 provide an acceptable level of safety regardless of whether the cylinder is equipped for use as a handheld fire extinguisher or as a component of a fixed fire suppression system.

As this issue is already being considered in an open rulemaking, we are not proposing to make any changes to the transport provisions for fire extinguishers or cylinders used in fire extinguishers. All comments, including potential impacts arising from differing domestic and international requirements, concerning transport requirements for cylinders used in fire extinguishers should be submitted to the HM–234 docket (Docket No. PHMSA–2011–0140) at *http://www.regulations.gov.*

VI. Section-By-Section Review

The following is a section-by-section review of the amendments proposed in this NPRM:

Part 107

Section 107.502

Section 107.502 provides general requirements for the registration of cargo tank and cargo tank motor vehicle manufacturers, assemblers, repairers, inspectors, testers, and design certifying engineers. In this NPRM, PHMSA proposes to revise paragraph (b) to provide an exception from the registration requirements for certain persons engaged in the repair, as defined in § 180.403, of DOT specification cargo tanks by facilities in Canada in accordance with the proposed § 180.413(a)(1)(iii) in this NPRM. Persons engaged in the repair of cargo tanks in Canada are required to register in accordance with the Transport Canada TDG Regulations as the Canadian registration requirements are substantially equivalent to those in part 107 subpart F of the HMR. The registration information is available on Transport Canada's Web site at *http://wwwapps.tc.gc.ca/saf-sec-sur/3/fdr-rici/highway/tanks.aspx.* The Transport Canada TDG Regulations except persons repairing TC specification cargo tanks at facilities in the United States from registering in Canada if they are registered in accordance with part 107 subpart F.

Therefore, PHMSA believes that requiring the registration of Canadian cargo tank repair facilities authorized by the proposed § 180.413(a)(1)(iii) would be unnecessarily duplicative and that excepting them from registering in accordance with part 107 subpart F would augment reciprocity without negatively impacting safety. See "Harmonization Proposals in this NPRM" and the § 180.413 entry in the "Section-by-Section Review" of this document for additional background and discussion of this proposal.

Section 107.801

Section 107.801 prescribes approval procedures for persons seeking to engage in a variety of activities regulated by PHMSA (*i.e.,* independent inspection agencies, cylinder requalification). In this NPRM, PHMSA proposes to amend paragraph (a)(2) to include provisions for persons seeking approval to engage in the requalification, rebuilding, or repair of a cylinder manufactured in accordance with a Transport Canada (TC), Canadian Transportation Commission (CTC), Board of Transport Commissioners for Canada (BTC) or Canadian Railway Commission (CRC) specification under the Transport Canada TDG Regulations. Persons engaged in the requalification, rebuilding, or repair of TC, CTC, CRC, or BTC specification cylinders in the U.S. are required to register with DOT in accordance with this subpart. PHMSA will issue a new approval or revise an existing one to reflect the applicant's intent to requalify TC cylinders. Upon approval, the Requalifier Identification Number (RIN) holder must mark the TC cylinder in accordance with applicable Transport Canada TDG Regulations except that the requalifier's registered mark shall be replaced with the DOT RIN. See the discussion of proposed changes to § 107.805 for additional requirements and exceptions.

Section 107.805

Section 107.805 prescribes the requirements cylinder and pressure receptacle requalifiers need to meet in order to be approved by PHMSA. In this NPRM, PHMSA proposes to amend paragraph (a) to authorize prospective requalifiers to obtain approval by PHMSA to inspect, test, certify, repair, or rebuild TC specification cylinders; to amend paragraph (c)(2) to ensure the types of TC cylinders intended to be inspected, tested, repaired, or rebuilt at the facility are included in the application for approval to PHMSA; and to amend paragraph (d) to include various TC cylinders to the list of cylinders requiring issuance of a RIN to requalifiers.

PHMSA also proposes to amend paragraph (f) to recognize facilities authorized by Transport Canada to requalify comparable DOT specification cylinders, as well as DOT RIN holders to requalify comparable Transport Canada cylinders subject to modification of their existing approval. PHMSA recognizes that Transport Canada's approval and registration requirements are substantially equivalent to the requirements in 49 CFR part 107 subpart I and provide an equivalent level of safety. In addition, traceability is maintained based on Transport Canada's publicly available Web site at *http://wwwapps.tc.gc.ca/saf-sec-sur/3/fdr-rici/cylinder/requalifier.aspx,* which allows tracing of a DOT specification cylinder marked with a Transport Canada assigned requalifier's registered mark back to the appropriate requalification facility.[3]

The proposed addition of paragraph (f)(2) would allow persons who are already registered with PHMSA to perform requalification functions on DOT specification cylinders to register to requalify corresponding TC cylinder specifications without additional review by an independent inspection agency. Specifications considered equivalent are identified in the preamble to this notice (see Table 1 in § 171.12 discussion). Applicants would be required to submit all of the information prescribed in § 107.705(a) that identifies the TC, CTC, CRC, or BTC specification cylinder(s) or tube(s) to be inspected; certifies the requalifier will operate in compliance with the applicable TDG regulations; and certifies the persons performing requalification have been trained in the functions applicable to the requalifier activities.

The proposed addition of paragraph (f)(3) would allow persons who are already registered with Transport Canada to requalify corresponding DOT specification cylinders without additional application to PHMSA for approval. This proposed exception would provide cylinder owners with additional access to repair and requalification facilities in Canada, while also broadening reciprocity with Canada.

Part 171

Section 171.2

Section 171.2 prescribes general requirements for each person performing functions covered by this subchapter. PHMSA proposes to amend paragraph (h)(1) by adding the letters "TC," "CRC," and "BTC" to the list of specification indications that may not be misrepresented according to § 171.2(g). This is necessary as a result of proposed amendments in § 171.12 authorizing the use of various Transport Canada approved specification cylinders under certain conditions.

Section 171.7

Section 171.7 provides a listing of all voluntary consensus standards incorporated by reference into the HMR, as directed by the "National Technology Transfer and Advancement Act of 1996." According to the Office of Management and Budget (OMB), Circular A–119, "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities," government agencies must use voluntary consensus standards wherever practical in the development of regulations. Agency adoption of industry standards promotes productivity and efficiency in government and industry, expands opportunities for international trade, conserves resources, improves health and safety, and protects the environment.

PHMSA actively participates in the development and updating of consensus standards through representation on more than 20 consensus standard bodies and regularly reviews updated consensus standards and considers their merit for inclusion in the HMR. For this rulemaking, we evaluated updated international consensus standards pertaining to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements and determined that the revised standards provide an enhanced level of safety without imposing significant compliance burdens. These standards have well-established and documented safety histories, and their adoption will maintain the high safety standard currently achieved under the HMR. Therefore, in this NPRM, PHMSA proposes to add and revise the following incorporation by reference materials:

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[3] The search function on Transport Canada's Web site allows users to search for the registered mark of requalifiers. Searching by the registered mark found on a cylinder will allow interested parties to verify that the cylinder was requalified by a facility certified by Transport Canada.

- Paragraph (t)(1), which incorporates the *International Civil Aviation Organization* Technical Instructions for the Safe Transport of Dangerous Goods by Air, 2015–2016 Edition, would be revised to incorporate the 2017–2018 Edition. The International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air contain detailed instructions necessary for the safe international transport of dangerous goods by air. The ICAO TI supports the broad principles by establishing requirements necessary to ensure hazardous materials are safely transported in aircraft while providing a level of safety that protects the aircraft and its occupants from undue risk.
- Paragraph (v)(2), which incorporates the *International Maritime Organization* International Maritime Dangerous Goods Code, 2014 Edition, Incorporating Amendment 37–14, English Edition, Volumes 1 and 2, would be revised to incorporate the 2016 Edition, Amendment 38–16. The International Maritime Organization International Maritime Dangerous Goods Code is intended to provide for the safe transportation of hazardous materials by vessel, protect crew members and to prevent marine pollution. The Code is based on the UN Model Regulations, but also includes additional requirements applicable to the transport of hazardous materials by sea (*e.g.*, requirements for marine pollutants; freight container loading procedures; stowage and segregation; and other requirements applicable to shipboard safety and preservation of the marine environment) that are not covered by the UN Model Regulations.
- Paragraph (w), which incorporates various *International Organization for Standardization* entries, would be revised to incorporate by reference standards for the specification, design, construction, testing, and use of gas cylinders:

—ISO 3807:2013 Gas cylinders—Acetylene cylinders—Basic requirements and type testing is proposed for incorporation in paragraph (w)(16). ISO 3807:2013 specifies the basic and type testing requirements for acetylene cylinders with and without fusible plugs with a maximum nominal water capacity of 150 L (39.62 gallons) and requirements regarding production/batch test procedures for manufacturing of acetylene cylinders with porous material.

—ISO 7866:2012 Gas cylinders—Refillable seamless aluminium alloy gas cylinders—Design, construction and testing; and ISO 7866:2012/Cor 1:2014 Gas cylinders—Refillable seamless aluminium alloy gas cylinders—Design, construction and testing, Technical Corrigendum 1 are proposed for incorporation in paragraphs (w)(27) and (w)(28). ISO 7866:2012 specifies minimum requirements for the material, design, construction and workmanship, manufacturing processes and tests at time of manufacture of refillable seamless aluminium alloy gas cylinders of water capacities up to and including 150 L (39.62 gallons) for compressed, liquefied and dissolved gases for worldwide use.

—ISO 11114–2:2013 Gas cylinders—Compatibility of cylinder and valve materials with gas contents—Part 2: Non-metallic materials is proposed for incorporation in paragraph (w)(48). ISO 11114–2:2013 gives guidance in the selection and evaluation of compatibility between non-metallic materials for gas cylinders and valves and the gas contents. It also covers bundles, tubes and pressure drums.

—ISO 9809–4:2014 Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 4: Stainless steel cylinders with an Rm value of less than 1 100 MPa is proposed for incorporation in paragraph (w)(36). ISO 9809–4:2014 specifies the minimum requirements for the material, design, construction and workmanship, manufacturing processes, examinations, and tests at manufacture of refillable seamless stainless steel gas cylinders of water capacities from 0.5 L (.13 gallons) up to and including 150 L (39.62 gallons) for compressed, liquefied, and dissolved gases.

—ISO 10297:2014 Gas cylinders—Cylinder valves—Specification and type testing is proposed for incorporation in paragraph (w)(42). ISO 10297:2014 specifies design, type testing and marking requirements for: (a) Cylinder valves intended to be fitted to refillable transportable gas cylinders; (b) main valves (excluding ball valves) for cylinder bundles; (c) cylinder valves or main valves with integrated pressure regulator (VIPR); which convey compressed, liquefied or dissolved gases.

—ISO 10462:2013 Gas cylinders—Transportable cylinders for dissolved acetylene—Periodic inspection and maintenance is proposed for incorporation in paragraph (w)(44). ISO 10462:2013 specifies requirements for the periodic inspection of acetylene cylinders as required for the transport of dangerous goods and for maintenance in connection with periodic inspection. It applies to acetylene cylinders with and without solvent and with a maximum nominal water capacity of 150 L (39.62 gallons).

—ISO 11119–1:2012 Gas cylinders—Refillable composite gas cylinders and tubes—Design, construction and testing—Part 1: Hoop wrapped fibre reinforced composite gas cylinders and tubes up to 450 l; ISO 11119–2:2012 Gas cylinders—Refillable composite gas cylinders and tubes—Design, construction and testing—Part 2: Fully wrapped fibre reinforced composite gas cylinders and tubes up to 450 l with load-sharing metal liners; ISO 11119–2:2012/Amd 1:2014 Gas cylinders—Refillable composite gas cylinders and tubes—Design, construction and testing—Part 2: Fully wrapped fibre reinforced composite gas cylinders and tubes up to 450 l with load-sharing metal liners; and ISO 11119–3:2013 Gas cylinders—Refillable composite gas cylinders and tubes—Design, construction and testing—Part 3: Fully wrapped fibre reinforced composite gas cylinders and tubes up to 450 l with non-load-sharing metallic or non-metallic liners are proposed for incorporation in paragraphs (w)(54), (w)(56), (w)(57), and (w)(59), respectively. ISO 11119–1:2012, ISO 11119–2:2012, and ISO 11119–3:2013 specify requirements for composite gas cylinders and tubes between 0.5 L (39.62 gallons) and 450 L (119 gallons) water capacity, for the storage and conveyance of compressed or liquefied gases.

—ISO 11515:2013 Gas cylinders—Refillable composite reinforced tubes of water capacity between 450 L and 3000 L—Design, construction and testing is proposed for incorporation in paragraph (w)(62). ISO 11515:2013 specifies minimum requirements for the design, construction and performance testing of composite reinforced tubes between 450 L (119 gallons) and 3,000 L (792.5 gallons) water capacity, for transport, storage and use of compressed or liquefied gases with test pressures up to and including 1600 bar with a design life of at least 15 years and less than or equal to 30 years.

- Paragraph (bb)(1), which incorporates the *Transport Canada* Transportation of Dangerous Goods Regulations, would add subparagraphs (xiii), (xiv), (xv), (xvi), (xvii), (xviii), and (xix) to include SOR/2014–152 and SOR/2014–159 published July 2, 2014; SOR/2014–159 Erratum published July

16, 2014; SOR/2014–152 Erratum published August 27, 2014; SOR/2014–306 published December 31, 2014; SOR/2014–306 Erratum published January 28, 2015; and SOR/2015–100 published May 20, 2015, respectively. The Transport Canada Transportation of Dangerous Goods Regulations proposed for incorporation in this NPRM are updates to the existing Transportation of Dangerous Goods Regulations and cover all updates made by Transport Canada between January 2014–May 2015.

- Paragraph (dd)(1), which incorporates the *United Nations* Recommendations on the Transport of Dangerous Goods—Model Regulations, 18th Revised Edition (2013), Volumes I and II, would be revised to incorporate the 19th Revised Edition (2015), Volumes I and II. The United Nations Model Regulations on the Transport of Dangerous Goods provide a basis for development of harmonized regulations for all modes of transport, in order to facilitate trade and the safe, efficient transport of hazardous materials.
- Paragraph (dd)(2), which incorporates the *United Nations* Recommendations on the Transport of Dangerous Goods—Manual of Tests and Criteria, 5th Revised Edition (2009), would be revised to incorporate the 6th Revised Edition (2015). The Manual of Tests and Criteria contains criteria, test methods and procedures to be used for classification of dangerous goods according to the provisions of Parts 2 and 3 of the United Nations Recommendations on the Transport of Dangerous Goods, Model Regulations, as well as of chemicals presenting physical hazards according to the Globally Harmonized System of Classification and Labelling of Chemicals (GHS).
- Paragraph (dd)(3) would be added to incorporate the *United Nations* Recommendations on the Transport of Dangerous Goods, Globally Harmonized System of Classification and Labelling of Chemicals (GHS), 6th Revised Edition (2015). Section 172.401 references the incorporation by reference of the GHS in § 171.7; however, this entry does not currently appear in § 171.7. The proposed addition of this paragraph would correct this oversight. The Globally Harmonized System of Classification and Labelling of Chemicals (GHS), addresses classification of chemicals by types of hazard and proposes harmonized hazard communication elements, including labels and safety data sheets. It aims at ensuring that information on physical hazards and toxicity from chemicals be available in order to enhance the protection of human health and the environment during the handling, transport and use of these chemicals. The GHS also provides a basis for harmonization of rules and regulations on chemicals at national, regional and worldwide level, an important factor also for trade facilitation.

Section 171.8

Section 171.8 defines terms generally used throughout the HMR that have broad or multi-modal applicability. In this NPRM, PHMSA proposes to add the following terms and definitions:

- *Design life:* PHMSA proposes to add the term "design life" to define the maximum life of composite cylinders and tubes. This term is specifically limited to references in the HMR related to composite cylinders and tubes.
- *SAPT:* PHMSA proposes to add the term "SAPT" and a reference to § 173.21(f). SAPT means self-accelerated polymerization temperature. See § 173.21(f) of this subchapter. This is consistent with the similar term SADT (self-accelerated decomposition temperature).
- *Service life:* PHMSA proposes to add the term "service life" to define the number of years a composite cylinder or tube is permitted to be in service. This term is specifically limited to references in the HMR related to composite cylinders and tubes.

Additionally, PHMSA proposes to amend the definitions for the following terms:

- *Aerosol:* PHMSA proposes to revise the definition of "aerosol" to clarify that it is an article. Currently under the HMR, an aerosol is considered to be an article and therefore the use of inner packagings in a combination package in not necessary. However, practice has shown that an aerosol is often mistaken for the inner packaging of a combination packaging, including both the substance dispensed (liquid, paste, or powder) and the propellant gas itself.
- *Large salvage packaging:* PHMSA proposes to revise the definition of "large salvage packaging" to add a reference to non-conforming hazardous materials packages to be consistent with the wording in the definition of "salvage packaging."
- *UN tube:* PHMSA proposes to revise the definition of "UN tube," which describes it as a seamless pressure receptacle, to specify that the term includes composite cylinders.

Section 171.12

Section 171.12 prescribes requirements for the use of the Transport Canada TDG Regulations. Under the U.S.-Canada RCC, which was established in 2011 by the President of the United States and the Canadian Prime Minister, PHMSA and Transport Canada, with input from stakeholders, identified impediments to cross-border transportation of hazardous materials. In this NPRM, PHMSA proposes to address these barriers by amending the HMR to expand recognition of cylinders, cargo tank repair facilities, and equivalency certificates in accordance with the TDG Regulations.

The HMR in § 171.12(a)(1) provide general authorizations to use the TDG Regulations for hazardous materials transported from Canada to the United States, from the United States to Canada, or through the United States to Canada or a foreign destination. PHMSA proposes to amend § 171.12(a)(1) to authorize the use of a Transport Canada equivalency certificate for such road or rail transportation of a hazardous material shipment. Consistent with existing authorizations to utilize the TDG Regulations for transportation from Canada to the United States, the proposed authorization to use a Transport Canada equivalency certificate only applies until the shipment's initial transportation ends. In other words, once a shipment offered in accordance with a Transport Canada equivalency certificate reaches the destination shown on either a transport document or package markings, transportation under the authorization in § 171.12 has ended. Any subsequent offering of packages imported under a Transport Canada equivalency certificate would have to be done in full compliance with the HMR. Transport Canada is proposing amendments to the TDG Regulations to authorize similar reciprocal treatment of PHMSA special permits.

The HMR in § 171.12(a)(4) authorize the transportation of a cylinder authorized by the Transport Canada TDG Regulations to, from, or within the United States. Currently this authorization is limited to Canadian Transport Commission (CTC) cylinders corresponding to a DOT specification cylinder and UN pressure receptacles marked with "CAN." In this NPRM, PHMSA proposes to amend paragraph (a)(4)(ii) authorizing the use of Canadian manufactured cylinders. Specifically, PHMSA proposes to authorize the transportation of CTC, CRC, BTC, and TC cylinders that have a corresponding DOT specification cylinder prescribed in the HMR.

This proposal does not remove or amend existing requirements for DOT specification cylinders; rather, PHMSA proposes to provide that a shipper may use either a DOT specification cylinder or a TC cylinder as appropriate. The goal of these amendments is to promote flexibility; to permit the use of advanced technology for the requalification and use of pressure receptacles; to provide for a broader selection of authorized pressure receptacles; to reduce the need for special permits; and to facilitate cross-border transportation of these cylinders.

Additionally, PHMSA proposes to amend paragraph (a)(4) to authorize the filling, maintenance, testing, and use of CTC, CRC, BTC, and TC cylinders that have a corresponding DOT specification cylinder as prescribed in HMR. This authorization will extend the recognition of cylinders manufactured in Canada to be filled, used, and requalified (including rebuild, repair, reheat-treatment) in the United States in accordance with the TDG Regulations.

Table 1 lists the Canadian cylinders with the corresponding DOT specification cylinders:

TABLE 1

TC	DOT (some or all of these may also be marked with a ICC prefix)	CTC (some or all of these may also be marked with a BTC and a CRC prefix)
TC–3AM	DOT–3A [ICC–3]	CTC–3A
TC–3AAM	DOT–3AA	CTC–3AA
TC–3ANM	DOT–3BN	CTC–3BN
TC–3EM	DOT–3E	CTC–3E
TC–3HTM	DOT–3HT	CTC–3HT
TC–3ALM	DOT–3AL	CTC–3AL
—	DOT–3B	CTC–3B
TC–3AXM	DOT–3AX	CTC–3AX
TC–3AAXM	DOT–3AAX	CTC–3AAX
TC–3TM	DOT–3T.	
TC–4AAM33	DOT–4AA480	CTC–4AA480
TC–4BM	DOT–4B	CTC–4B
TC–4BM17ET	DOT–4B240ET	CTC–4B240ET
TC–4BAM	DOT–4BA	CTC–4BA
TC–4BWM	DOT–4BW	CTC–4BW
TC–4DM	DOT–4D	CTC–4D
TC–4DAM	DOT–4DA	CTC–4DA
TC–4DSM	DOT–4DS	CTC–4DS
TC–4EM	DOT–4E	CTC–4E
TC–39M	DOT–39	CTC–39
TC–4LM	DOT–4L	CTC–4L
	DOT–8	CTC–8
	DOT–8AL	CTC–8AL

A U.S.-based facility is permitted to refill and use a cylinder marked as meeting CTC specification provided it complies with the applicable requirements specified in § 171.12. In accordance with § 171.12(a)(4), when the provisions of subchapter C of the HMR require that a DOT specification or a UN pressure receptacle must be used for a hazardous material, a packaging authorized by Transport Canada's TDG Regulations may be used only if it corresponds to the DOT specification or UN standard authorized by this subchapter.

If implemented, the proposed actions described above would resolve many of the existing reciprocity issues, streamline the processing of Canadian cylinders within the United States, and alleviate unnecessary burdens on the transportation industry. DOT RIN holders may requalify and mark a TC cylinder in accordance with applicable TDG Regulations, including the application of metric markings.

Section 171.23

Section 171.23 prescribes requirements for specific materials and packagings transported under the various international standards authorized by the HMR. PHMSA proposes to amend paragraph (a) to add TC, CTC, BTC, or CRC specification cylinders to the list of cylinders which may be transported to from or within the United States.

Part 172

Section 172.101

Section 172.101 provides the Hazardous Materials Table (HMT), as well as instructions for its use. Readers should review all changes for a complete understanding of the amendments. For purposes of the Government Printing Office's typesetting procedures, proposed changes to the HMT appear under three sections of the Table: "remove," "add," and "revise." Certain entries in the HMT, such as those with revisions to the proper shipping names, appear as a "remove" and "add." In this NPRM, PHMSA proposes to amend the HMT for the following:

New HMT entries:

- UN 0510 Rocket Motors, Division 1.4C

This new HMT entry is the result of packaged products of low power "Rocket motors" that typically meet test criteria for assignment to Division 1.4, Compatibility Group C, but are assigned to 1.3C (*i.e.,* UN 0186) or the 1.4C n.o.s. classification (*i.e.,* UN 0351). This 1.4 rocket motor entry accurately reflects the product type and hazard of these articles and allows for the assignment of specific packaging instructions. With the addition of an internationally recognized proper shipping name and identification number, PHMSA is considering the removal of the existing HMT entry "NA 0276, Model rocket motor." We specifically solicit comment on the potential impact of removing the existing "NA 0276" 1.4C HMT entry.

- UN 3527 Polyester resin kit, *solid base material*

This new HMT entry addresses polyester resin kits with a base material that does not meet the definition of Class 3 (Flammable liquid) and is more appropriately classed as a Division 4.1 (Flammable solid). Presently, polyester resin kits are limited to those with a Class 3 liquid base material component and are assigned under the entry UN 3269. This new entry permits products with a viscous base component containing a flammable solvent that does not meet the definition of a flammable liquid but does meet the definition of a flammable solid.

- UN 3528 Engine, internal combustion, flammable liquid powered *or* Engine, fuel cell, flammable liquid powered *or* Machinery, internal combustion, flammable liquid powered *or* Machinery, fuel cell, flammable liquid powered
- UN 3529 Engine, internal combustion, flammable gas powered *or* Engine, fuel cell, flammable gas powered *or* Machinery, internal combustion, flammable gas powered *or* Machinery, fuel cell, flammable gas powered
- UN 3530 Engine, internal combustion *or* Machinery, internal combustion

These new HMT entries apply to the fuel contained in engines and machinery powered by Class 3 flammable liquids, Division 2.1 gases, and Class 9 environmentally hazardous substances. The previous entry applicable to these articles, UN 3166, is now applicable to vehicles only. As a result of the new "Engine" and "Machinery" entries, the entries "UN 3166, Engines, internal combustion, *or* Engines, fuel cell, *flammable gas powered*" and "UN 3166, Engines internal combustion, *or* Engines, fuel cell, *flammable liquid powered*" are removed.

- UN 3531 Polymerizing substance, solid, stabilized, n.o.s.
- UN 3532 Polymerizing substance, liquid, stabilized, n.o.s.
- UN 3533 Polymerizing substance, solid, temperature controlled, n.o.s.
- UN 3534 Polymerizing substance, liquid, temperature controlled, n.o.s.

These new Division 4.1 HMT entries are added for polymerizing substances that do not meet the criteria for inclusion in any other hazard class.

- Catecholborane (also known as 1, 3, 2-Benzodioxaborole)

At the ICAO DGP/25 meeting, the Panel was informed of an incident involving Catecholborane (also known as 1, 3, 2-Benzodioxaborole) that resulted in an industry recommendation to forbid transport of the substance by air unless transported in pressure receptacles and under cooled conditions. The material was classified as "UN 2924, Flammable liquid, corrosive, n.o.s." The product properties indicated (1) that the substance decomposes to borane gas at a rate of 2 percent per week at room temperature, (2) that borane gas could ignite when in contact with moist air, and (3) that catecholborane could react violently with water. The incident occurred after transport of the substance was delayed for nine days as the result of extreme weather conditions with temperatures consistently above 33 °C (91 °F). After being stored for approximately two weeks at a low temperature at the destination, several bottles containing the substance exploded and caught fire. It was concluded that moist air entered the bottles during the long transit time under high temperatures causing a chemical reaction and pressure build up. Panel members suspected a classification problem, but they could not determine whether this was due to shipper error or a limitation in the classification criteria in the regulations. The issue was submitted to the attention of the UN Sub-Committee at the December 2016 meeting for further review and determination if a new classification was required. In the interim, a new light type entry was added to the ICAO Technical Instructions Dangerous Goods List with a new special provision (A210) assigned to "Catecholborane" and "1, 3, 2-Benzodioxaborole" forbidding the substance for transport by air on both passenger and cargo aircraft. Transport on cargo aircraft would be possible with the approval of the State of Origin and State of the Operator.

Consistent with the ICAO Technical Instructions, PHMSA proposes to add new HMT entries in italics for "Catecholborane" and "1, 3, 2-Benzodioxaborole" and to assign a new special provision A210 clarifying that this material is forbidden for air transport unless approved by the Associate Administrator.

Amendments to column (2) hazardous materials descriptions and proper shipping names:

Section 172.101(c) describes column (2) of the HMT and the requirements for hazardous materials descriptions and proper shipping names.

- PHMSA proposes to amend the proper shipping name for "UN 3269, Polyester resin kit" by adding the italicized text "liquid base material." This is consistent with the format of the new HMT entry for polyester resin kits with a solid base material.
- PHMSA proposes to amend the proper shipping names for "UN 3151, Polyhalogenated biphenyls, liquid *or* Polyhalogenated terphenyls, liquid" and "UN 3152, Polyhalogenated biphenyls, solid or Polyhalogenated terphenyls, solid" by adding "Halogenated monomethyldiphenylmethanes, liquid" and "Halogenated monomethyldiphenylmethanes, solid," respectively. Noting that halogenated monomethyldiphenylmethanes have similar chemical and ecotoxicological properties as polychlorinated biphenyls (PCBs) and polychlorinated terphenyls (PCTs), we propose this revision to ensure that they are considered as PCBs or PCTs for the purposes of transport.

Amendments to column (3) hazard class or division:

Section 172.101(d) describes column (3) of the HMT and the designation of the hazard class or division corresponding to each proper shipping name.

PHMSA proposes to revise the hazard class of "UN 3507, Uranium hexafluoride, radioactive material, excepted package, *less than 0.1 kg per package, non-fissile or fissile-excepted,*" from Class 8 to Division 6.1 and subsequently to add the Class 8 hazard as a subsidiary hazard label code in column (6). This revision is based on the precedence provisions for classification of materials possessing more than one hazard and is consistent with the 19th Revised Edition of the UN Model Regulations. The presence of a Division 6.1 hazard was determined following a thorough review of literature and test data on uranium hexafluoride. A summary of the data and a proposal to revise the primary hazard class from Class 8 to Division 6.1 was provided in Working Paper ST/SG/AC.10/C.3/2014/60, which was submitted to the 45th session of the UN Sub-Committee of Experts on the Transport of Dangerous Goods and is available at *http://www.unece.org/fileadmin/DAM/trans/doc/2013/dgac10c3/ST-SG-AC.10-C.3-2014-60e.pdf.*

Amendments to column (6) label(s):

Section 172.101(g) describes column (6) of the HMT and the labels required (primary and subsidiary) for specific entries in the HMT.

Data presented to the UNSCOE in this last biennium indicated a need for the addition of a subsidiary hazard of Division 6.1 to be assigned to "UN 2815, N-Aminoethylpiperazine," "UN 2977, Radioactive material, uranium hexafluoride, fissile," and "UN 2978, Radioactive material, uranium hexafluoride *non fissile or fissile-excepted.*" PHMSA proposes to make appropriate amendments to the HMT to account for these revisions to the UN Model Regulations.

For the HMT entry, "UN 3507, Uranium hexafluoride, radioactive material, excepted package, *less than 0.1 kg per package, non-fissile or fissile-excepted,*" PHMSA proposes to revise the labels for consistency with the change made to the classification of this material under amendments to column (3) (see above). The Class 8 (Corrosive) primary hazard label would be revised to a Division 6.1 primary hazard label and Class 8 subsidiary hazard label in addition to the existing Class 7 (Radioactive) subsidiary hazard label to read “6.1, 7, 8.”

Amendments to column (7) special provisions:

Section 172.101(h) describes column (7) of the HMT whereas § 172.102(c) prescribes the special provisions assigned to specific entries in the HMT. The particular modifications to the entries in the HMT are discussed below. See “Section 172.102 special provisions” below for a detailed discussion of the proposed additions, revisions, and deletions to the special provisions addressed in this NPRM.

- In this NPRM, new special provision 157 is proposed to be assigned to the HMT entry “UN 3527, Polyester resin kit, *solid base material.*”
- In this NPRM, new special provision 379 is proposed to be assigned to the HMT entries “UN1005, Ammonia, anhydrous” and “UN 3516, Adsorbed gas, toxic, corrosive, n.o.s.”
- In the 19th Revised Edition of the UN Model Regulations, new special provision 386 was assigned to the four new “n.o.s.” HMT entries for polymerizing substances and to the 52 named substances in the HMT that polymerize, all of which contain the text “stabilized” as part of the proper shipping name, except for “UN 2383, Dipropylamine” (see Table 2 below). This new special provision includes transport controls to avoid dangerous polymerization reactions including the use of chemical stabilization or temperature control.

In this NPRM, new special provision 387 (special provision 386 already exists) is proposed to be assigned to all 52 HMT entries.

TABLE 2

Proper shipping name	UN No.
Acrolein dimer, stabilized	UN2607
Acrolein, stabilized	UN1092
Acrylic acid, stabilized	UN2218
Acrylonitrile, stabilized	UN1093
Allyl isothiocyanate, stabilized	UN1545
Allyltrichlorosilane, stabilized	UN1724
Bicyclo [2,2,1] hepta-2,5-diene, stabilized *or* 2,5-Norbornadiene, stabilized	UN2251
Butadienes, stabilized *or* Butadienes and Hydrocarbon mixture, stabilized *containing more than 40% butadienes*	UN1010
Butyl acrylates, stabilized	UN2348
n-Butyl methacrylate, stabilized	UN2227
Butyl vinyl ether, stabilized	UN2352
1,2-Butylene oxide, stabilized	UN3022
Chloroprene, stabilized	UN1991
Crotonaldehyde *or* Crotonaldehyde, stabilized	UN1143
Cyanogen chloride, stabilized	UN1589
Diketene, stabilized	UN2521
Dipropylamine	UN2383
Divinyl ether, stabilized	UN1167
Ethyl acrylate, stabilized	UN1917
Ethyl methacrylate, stabilized	UN2277
Ethylacetylene, stabilized	UN2452
Ethyleneimine, stabilized	UN1185
Hydrogen cyanide, stabilized *with less than 3 percent water*	UN1051
Hydrogen cyanide, stabilized, *with less than 3 percent water and absorbed in a porous inert material*	UN1614
Isobutyl acrylate, stabilized	UN2527
Isobutyl methacrylate, stabilized	UN2283
Isoprene, stabilized	UN1218
Methacrylaldehyde, stabilized	UN2396
Methacrylic acid, stabilized	UN2531
Methacrylonitrile, stabilized	UN3079
Methyl acetylene and propadiene mixtures, stabilized	UN1060
Methyl acrylate, stabilized	UN1919
Methyl isopropenyl ketone, stabilized	UN1246
Methyl methacrylate monomer, stabilized	UN1247
Methyl vinyl ketone, stabilized	UN1251
Propadiene, stabilized	UN2200
Propyleneimine, stabilized	UN1921
Styrene monomer, stabilized	UN2055
Sulfur trioxide, stabilized	UN1829
Tetrafluoroethylene, stabilized	UN1081
Trifluorochloroethylene, stabilized *or* Refrigerant gas R 1113	UN1082
Vinyl acetate, stabilized	UN1301
Vinyl bromide, stabilized	UN1085
Vinyl butyrate, stabilized	UN2838
Vinyl chloride, stabilized	UN1086
Vinyl ethyl ether, stabilized	UN1302
Vinyl fluoride, stabilized	UN1860
Vinyl isobutyl ether, stabilized	UN1304
Vinyl methyl ether, stabilized	UN1087
Vinylidene chloride, stabilized	UN1303
Vinylpyridines, stabilized	UN3073
Vinyltoluenes, stabilized	UN2618

- In this NPRM, new special provision 422 is proposed to be assigned to the HMT entries "UN 3480, Lithium ion batteries *including lithium ion polymer batteries"; "*UN 3481, Lithium ion batteries contained in equipment *including lithium ion polymer batteries"; "*UN 3481 Lithium ion batteries packed with equipment *including lithium ion polymer batteries"; "*UN 3090, Lithium metal batteries *including lithium alloy batteries"; "*UN 3091, Lithium metal batteries contained in equipment *including lithium alloy batteries";* and "UN3091, Lithium metal batteries packed with equipment *including lithium alloy batteries."*
- In this NPRM, special provision 134 is proposed to be removed from the HMT entry "UN 3072, Life-saving appliances, not self-inflating *containing dangerous goods as equipment"* and replaced with new special provision 182. On January 8, 2015, PHMSA published a final rule [Docket No. PHMSA–2013–0260 (HM–215M); 80 FR 1075] that added special provision 134 to "UN 3072." The intent of this action was to harmonize with special provision A182 of the ICAO Technical Instructions to clarify that equipment containing only lithium batteries must be classified as either lithium batteries contained in or packed with equipment "UN 3091" or "UN 3481." In reviewing the assignment of special provision 134 to "UN 3072" to make this clarification, PHMSA found that the provisions of special provision 134 are not assigned to "UN 3072" in any international standard, but rather to the entry for "UN 3171, Battery-powered vehicle *or* Battery-powered equipment." Although special provision 134 does require that equipment powered only by lithium metal batteries or lithium ion batteries must be consigned under the entries associated with lithium batteries contained in or packed with equipment, the rest of special provision 134 is not applicable to "Life-saving appliances, not self-inflating *containing dangerous goods as equipment."* As a result, PHMSA proposes a new special provision 182 applicable only to the HMT entry for "UN 3072, Life-saving appliances, not self-inflating *containing dangerous goods as equipment"* to clarify that equipment containing only lithium batteries must be classified as either lithium batteries contained in or packed with equipment "UN 3091" or "UN 3481," as appropriate.
- In this NPRM, new special provision A210 is proposed to be assigned to the new HMT italicized entries for "Catecholborane" and "1, 3, 2-Benzodioxaborole."
- In this NPRM, new special provision A212 is proposed to be assigned to the HMT entry "UN 2031, Nitric acid *other than red fuming, with more than 20 percent and less than 65 percent nitric acid."*
- In this NPRM, new special provision B134 is proposed to be assigned to the PG III entries in Table 4 to be consistent with revisions to the IMDG Code.

TABLE 4

Proper shipping name	UN No.
Aluminum powder, coated	UN1309
Ferrous metal borings *or* Ferrous metal shavings *or* Ferrous metal turnings *or* Ferrous metal cuttings *in a form liable to self-heating*	UN2793
Iron oxide, spent, *or* Iron sponge, spent *obtained from coal gas purification* ..	UN1376
Magnesium *or* Magnesium alloys *with more than 50 percent magnesium in pellets, turnings or ribbons*	UN1869
Peroxides, inorganic, n.o.s ...	UN1483
Titanium sponge granules *or* Titanium sponge powders	UN2878

- In this NPRM, new special provision B135 is proposed to be assigned to the PG III entries in Table 5 consistent with revisions to the IMDG Code.

TABLE 5

Proper shipping name	UN No.
Hafnium powder, dry	UN2545
Metal catalyst, dry	UN2881
Metal powder, self-heating, n.o.s	UN3189
Titanium powder, dry	UN2546
Zirconium powder, dry	UN2008
Zirconium scrap	UN1932

- In this NPRM, special provision TP1 is changed to TP2 for the following entries: "UN 2672, Ammonia solution, *relative density between 0.880 and 0.957 at 15 degrees C in water, with more than 10 percent but not more than 35 percent ammonia";* "UN 2709, Butyl benzenes"; "UN 2241, Cycloheptane"; "UN 1206, Heptanes"; "UN 1208, Hexanes"; "UN 2294, N-Methylaniline"; "UN 2296, Methylcyclohexane"; "UN 1920, Nonanes"; "UN 1262, Octanes"; "UN 2368, alpha-Pinene"; "UN 1272, Pine oil"; "UN 2850, Propylene tetramer"; "UN 2325, 1,3,5-Trimethylbenzene"; "UN 2057, Tripropylene"; "UN 1299, Turpentine"; and "UN 1840, Zinc chloride, solution." Tank provision TP2 authorizes a slightly lower degree of filling than TP1. The IMDG Code follows a guiding principle that assigns TP2 to materials that are marine pollutants. In a previous harmonization rulemaking (HM–215M; 80 FR 1075), PHMSA added various hazardous materials to the list of marine pollutants in appendix B to § 172.101, but both the HMT and IMDG Code failed to change the TP code from TP1 to TP2 to authorize a lower degree of filling.
- In this NPRM, special provisions T9, TP7, and TP33 are proposed to be assigned to the HMT entry "UN 1415, Lithium." This permits UN 1415 for transportation in UN portable tanks consistent with similar Division 4.3, PG I materials.
- In this NPRM, new special provisions W31, W32, W40, and W100 are proposed to certain water-reactive substances. The proposed special provisions correspond with special packaging provisions PP31, PP31 "modified" (Packing Instruction P403), PP40, and PP100 of the IMDG Code, respectively. Table 6 contains the proposed changes listed in alphabetical order and showing the proper shipping name, UN identification number, and the proposed special provision(s).

TABLE 6

Proper shipping name	UN No.	Proposed addition(s)
Alkali metal alcoholates, self-heating, corrosive, n.o.s	UN3206	W31
Alkali metal alloys, liquid, n.o.s	UN1421	W31
Alkali metal amalgam, liquid	UN1389	W31
Alkali metal amalgam, solid	UN3401	W32
Alkali metal amides	UN1390	W31, W40
Alkali metal dispersions, flammable *or* Alkaline earth metal dispersions, flammable	UN3482	W31
Alkali metal dispersions, *or* Alkaline earth metal dispersions	UN1391	W31

TABLE 6—Continued

Proper shipping name	UN No.	Proposed addition(s)
Alkaline earth metal alcoholates, n.o.s	UN3205	W31
Alkaline earth metal alloys, n.o.s	UN1393	W31, W40
Alkaline earth metal amalgams, liquid	UN1392	W31
Alkaline earth metal amalgams, solid	UN3402	W32
Aluminum carbide	UN1394	W31, W40
Aluminum ferrosilicon powder (PG II)	UN1395	W31, W40
Aluminum hydride	UN2463	W32
Aluminum phosphide	UN1397	W32
Aluminum phosphide pesticides	UN3048	W31
Aluminum powder, coated	UN1309	W100
Aluminum powder, uncoated	UN1396	W31, W40
Aluminum silicon powder, uncoated	UN1398	W31, W40
Aluminum smelting by-products *or* Aluminum remelting by-products (PG II)	UN3170	W31, W40
Aluminum smelting by-products *or* Aluminum remelting by-products (PG III)	UN3170	W31
2-Amino-4,6-Dinitrophenol, wetted *with not less than 20 percent water by mass*	UN3317	W31
Ammonium picrate, wetted *with not less than 10 percent water, by mass*	UN1310	W31
Arsenic acid, liquid	UN1533	W31
Barium	UN1400	W31, W40
Barium alloys, pyrophoric	UN1854	W31
Barium azide, wetted *with not less than 50 percent water, by mass*	UN1571	W31
Barium cyanide	UN1565	W31
Barium peroxide	UN1449	W100
Beryllium, powder	UN1567	W100
Boron trifluoride diethyl etherate	UN2604	W31
Boron trifluoride dimethyl etherate	UN2965	W31
Bromobenzyl cyanides, liquid	UN1694	W31
Bromobenzyl cyanides, solid	UN3449	W31
Calcium	UN1401	W31, W40
Calcium carbide (PG I)	UN1402	W32
Calcium carbide (PG II)	UN1402	W31, W40
Calcium cyanamide *with more than 0.1 percent of calcium carbide*	UN1403	W31, W40
Calcium cyanide	UN1575	W31
Calcium dithionite *or* Calcium hydrosulfite	UN1923	W31
Calcium hydride	UN1404	W32
Calcium manganese silicon	UN2844	W31
Calcium peroxide	UN1457	W100
Calcium phosphide	UN1360	W32
Calcium, pyrophoric *or* Calcium alloys, pyrophoric	UN1855	W31
Calcium silicide (PG II)	UN1405	W31
Calcium silicide (PG III)	UN1405	W31, W40
Carbon, activated	UN1362	W31
Carbon disulfide	UN1131	W31
Cerium, *slabs, ingots, or rods*	UN1333	W100
Cerium, *turnings or gritty powder*	UN3078	W31, W40
Cesium *or* Caesium	UN1407	W32
Chloric acid aqueous solution, *with not more than 10 percent chloric acid*	UN2626	W31
Chlorosilanes, water-reactive, flammable, corrosive, n.o.s	UN2988	W31
Chromium trioxide, anhydrous	UN1463	W31
Corrosive solids, water-reactive, n.o.s (PG II)	UN3096	W100
Cyanogen bromide	UN1889	W31
Decaborane	UN1868	W31
Dinitrophenol, wetted *with not less than 15 percent water, by mass*	UN1320	W31
Dinitrophenolates, wetted *with not less than 15 percent water, by mass*	UN1321	W31
Dinitroresorcinol, wetted *with not less than 15 percent water, by mass*	UN1322	W31
Diphenylamine chloroarsine	UN1698	W31
Diphenylchloroarsine, liquid	UN1699	W31
Diphenylchloroarsine, solid	UN3450	W31
Dipicryl sulfide, wetted *with not less than 10 percent water, by mass*	UN2852	W31
Ethyldichlorosilane	UN1183	W31
Ferrocerium	UN1323	W100
Ferrosilicon *with 30 percent or more but less than 90 percent silicon*	UN1408	W100
Ferrous metal borings *or* Ferrous metal shavings *or* Ferrous metal turnings *or* Ferrous metal cuttings *in a form liable to self-heating.*	UN2793	W100
Fibers *or* Fabrics, animal *or* vegetable *or* Synthetic, n.o.s. *with animal or vegetable oil*	UN1373	W31
Fish meal, unstabilized *or* Fish scrap, unstabilized	UN1374	W31, W40
Hafnium powder, dry	UN2545	W31
Hafnium powder, wetted *with not less than 25 percent water (a visible excess of water must be present) (a) mechanically produced, particle size less than 53 microns; (b) chemically produced, particle size less than 840 microns.*	UN1326	W31, W40
Iron oxide, spent, *or* Iron sponge, spent *obtained from coal gas purification*	UN1376	W100
Isocyanates, flammable, toxic, n.o.s. *or* Isocyanate solutions, flammable, toxic, n.o.s. *flash point less than 23 degrees C.*	UN2478	W31

TABLE 6—Continued

Proper shipping name	UN No.	Proposed addition(s)
Lithium	UN1415	W32
Lithium aluminum hydride	UN1410	W32
Lithium borohydride	UN1413	W32
Lithium ferrosilicon	UN2830	W31, W40
Lithium hydride	UN1414	W32
Lithium hydride, fused solid	UN2805	W31, W40
Lithium nitride	UN2806	W32
Lithium peroxide	UN1472	W100
Lithium silicon	UN1417	W31, W40
Magnesium aluminum phosphide	UN1419	W32
Magnesium diamide	UN2004	W31
Magnesium granules, coated, *particle size not less than 149 microns*	UN2950	W100
Magnesium hydride	UN2010	W32
Magnesium *or* Magnesium alloys *with more than 50 percent magnesium in pellets, turnings or ribbons*	UN1869	W100
Magnesium peroxide	UN1476	W100
Magnesium phosphide	UN2011	W32
Magnesium, powder *or* Magnesium alloys, powder (PG I)	UN1418	W32
Magnesium, powder *or* Magnesium alloys, powder (PG II)	UN1418	W31, W40
Magnesium, powder *or* Magnesium alloys, powder (PG III)	UN1418	W31
Magnesium silicide	UN2624	W31, W40
Maneb *or* Maneb preparations *with not less than 60 percent maneb*	UN2210	W100
Maneb stabilized *or* Maneb preparations, stabilized *against self-heating*	UN2968	W100
Mercuric potassium cyanide	UN1626	W31
Metal catalyst, dry	UN2881	W31
Metal catalyst, wetted *with a visible excess of liquid*	UN1378	W31, W40
Metal hydrides, flammable, n.o.s. (PG II)	UN3182	W31, W40
Metal hydrides, flammable, n.o.s. (PG III)	UN3182	W31
Metal hydrides, water reactive, n.o.s (PG I)	UN1409	W32
Metal hydrides, water reactive, n.o.s (PG II)	UN1409	W31, W40
Metal powder, self-heating, n.o.s	UN3189	W31
Metal powders, flammable, n.o.s	UN3089	W100
Metal salts of organic compounds, flammable, n.o.s	UN3181	W31
Metallic substance, water-reactive, n.o.s (PG I)	UN3208	W32
Metallic substance, water-reactive, n.o.s (PG II)	....	W31
Metallic substance, water-reactive, n.o.s (PG III)	UN3208	W31, W40
Metallic substance, water-reactive, self-heating, n.o.s (PG I and III)	UN3209	W32
Metallic substance, water-reactive, self-heating, n.o.s (PG II)	UN3209	W32, W40
Methyldichlorosilane	UN1242	W31
Nitrocellulose, *with not more than 12.6 percent nitrogen, by dry mass* mixture with *or* without plasticizer, with *or* without pigment.	UN2557	W31
Nitrocellulose with alcohol *with not less than 25 percent alcohol by mass, and with not more than 12.6 percent nitrogen, by dry mass.*	UN2556	W31
Nitrocellulose with water *with not less than 25 percent water by mass*	UN2555	W31
Nitroguanidine, wetted *or* Picrite, wetted *with not less than 20 percent water, by mass*	UN1336	W31
4-Nitrophenylhydrazine, *with not less than 30 percent water, by mass*	UN3376	W31
Nitrostarch, wetted *with not less than 20 percent water, by mass*	UN1337	W31
Organometallic substance, liquid, water-reactive	UN3398	W31
Organometallic substance, liquid, water-reactive, flammable	UN3399	W31
Organometallic substance, solid, water-reactive	UN3395	W31
Organometallic substance, solid, water-reactive, flammable	UN3396	W31
Organometallic substance, solid, water-reactive, self-heating	UN3397	W31
Osmium tetroxide	UN2471	W31
Paper, unsaturated oil treated *incompletely dried (including carbon paper)*	UN1379	W31
Peroxides, inorganic, n.o.s	UN1483	W100
9-Phosphabicyclononanes *or* Cyclooctadiene phosphines	UN2940	W31
Phosphorus heptasulfide, *free from yellow or white phosphorus*	UN1339	W31
Phosphorus pentasulfide, *free from yellow or white phosphorus*	UN1340	W31, W40
Phosphorus sesquisulfide, *free from yellow or white phosphorus*	UN1341	W31
Phosphorus trisulfide, *free from yellow or white phosphorus*	UN1343	W31
Phosphorus, white dry *or* Phosphorus, white, under water *or* Phosphorus white, in solution *or* Phosphorus, yellow dry *or* Phosphorus, yellow, under water *or* Phosphorus, yellow, in solution.	UN1381	W31
Potassium	UN2257	W32
Potassium borohydride	UN1870	W32
Potassium cyanide, solid	UN1680	W31
Potassium cyanide solution	UN3413	W31
Potassium dithionite *or* Potassium hydrosulfite	UN1929	W31
Potassium, metal alloys, liquid	UN1420	W31
Potassium, metal alloys, solid	UN3403	W32
Potassium phosphide	UN2012	W32
Potassium sodium alloys, liquid	UN1422	W31
Potassium sodium alloys, solid	UN3404	W32

TABLE 6—Continued

Proper shipping name	UN No.	Proposed addition(s)
Potassium sulfide, anhydrous *or* Potassium sulfide *with less than 30 percent water of crystallization*	UN1382	W31, W40
Pyrophoric liquids, organic, n.o.s	UN2845	W31
Pyrophoric metals, n.o.s., *or* Pyrophoric alloys, n.o.s	UN1383	W31
Pyrophoric solid, inorganic, n.o.s	UN3200	W31
Pyrophoric solids, organic, n.o.s	UN2846	W31
Rubidium	UN1423	W32
Self-heating liquid, corrosive, inorganic, n.o.s	UN3188	W31
Self-heating liquid, corrosive, organic, n.o.s	UN3185	W31
Self-heating liquid, inorganic, n.o.s	UN3186	W31
Self-heating liquid, organic, n.o.s	UN3183	W31
Self-heating liquid, toxic, inorganic, n.o.s	UN3187	W31
Self-heating liquid, toxic, organic, n.o.s	UN3184	W31
Self-heating solid, inorganic, n.o.s	UN3190	W31
Self-heating solid, organic, n.o.s	UN3088	W31
Silver picrate, wetted *with not less than 30 percent water, by mass*	UN1347	W31
Sodium	UN1428	W32
Sodium aluminum hydride	UN2835	W31, W40
Sodium borohydride	UN1426	W32
Sodium cyanide, solid	UN1689	W31
Sodium cyanide solution	UN3414	W31
Sodium dinitro-o-cresolate, wetted *with not less than 10% water, by mass*	UN3369	W31
Sodium dinitro-o-cresolate, wetted *with not less than 15 percent water, by mass*	UN1348	W31
Sodium dithionite *or* Sodium hydrosulfite	UN1384	W31
Sodium hydride	UN1427	W32
Sodium hydrosulfide, *with less than 25 percent water of crystallization*	UN2318	W31
Sodium methylate	UN1431	W31
Sodium phosphide	UN1432	W32
Sodium picramate, *wetted with not less than 20 percent water, by mass*	UN1349	W31
Sodium sulfide, anhydrous *or* Sodium sulfide *with less than 30 percent water of crystallization*	UN1385	W31, W40
Stannic phosphide	UN1433	W32
Strontium peroxide	UN1509	W100
Strontium phosphide	UN2013	W32
Tear gas substances, liquid, n.o.s	UN1693	W31
Tear gas substance, solid, n.o.s	UN3448	W31
4-Thiapentanal	UN2785	W31
Thiourea dioxide	UN3341	W31
Titanium disulphide	UN3174	W31
Titanium hydride	UN1871	W31, W40
Titanium powder, dry	UN2546	W31
Titanium powder, wetted *with not less than 25 percent water (a visible excess of water must be present) (a) mechanically produced, particle size less than 53 microns; (b) chemically produced, particle size less than 840 microns.*	UN1352	W31, W40
Titanium sponge granules *or* Titanium sponge powders	UN2878	W100
Titanium trichloride, pyrophoric *or* Titanium trichloride mixtures, pyrophoric	UN2441	W31
Toxic solids, water-reactive, n.o.s	UN3125	W100
Trichlorosilane	UN1295	W31
Trinitrobenzene, wetted, *with not less than 10% water, by mass*	UN3367	W31
Trinitrobenzene, wetted *with not less than 30 percent water, by mass*	UN1354	W31
Trinitrobenzoic acid, wetted *with not less than 10% water by mass*	UN3368	W31
Trinitrobenzoic acid, wetted *with not less than 30 percent water, by mass*	UN1355	W31
Trinitrochlorobenzene (picryl chloride), wetted, *with not less than 10% water by mass*	UN3365	W31
Trinitrophenol (picric acid), wetted, *with not less than 10 percent water by mass*	UN3364	W31
Trinitrophenol, wetted *with not less than 30 percent water, by mass*	UN1344	W31
Trinitrotoluene (TNT), wetted, *with not less than 10 percent water by mass*	UN3366	W31
Trinitrotoluene, wetted *or* TNT, wetted, *with not less than 30 percent water by mass*	UN1356	W31
Urea nitrate, wetted, *with not less than 10 percent water by mass*	UN3370	W31
Urea nitrate, wetted *with not less than 20 percent water, by mass*	UN1357	W31
Water-reactive liquid, n.o.s	UN3148	W31
Water-reactive solid, corrosive, n.o.s (PG I and III)	UN3131	W31
Water-reactive solid, corrosive, n.o.s (PG II)	UN3131	W31, W40
Water-reactive solid, flammable, n.o.s (PG I and III)	UN3132	W31
Water-reactive solid, flammable, n.o.s (PG III)	UN3132	W31, W40
Water-reactive solid, n.o.s (PG I)	UN2813	W32
Water-reactive solid, n.o.s (PG II)	UN2813	W31, W40
Water-reactive solid, n.o.s (PG III)	UN2813	W31
Water-reactive solid, self-heating, n.o.s (PG I and III)	UN3135	W31
Water-reactive solid, self-heating, n.o.s (PG I)	UN3135	W31, W40
Water-reactive solid, toxic, n.o.s (PG I and III)	UN3134	W31
Water-reactive solid, toxic, n.o.s (PG II)	UN3134	W31, W40
Xanthates	UN3342	W31
Xylyl bromide, liquid	UN1701	W31

TABLE 6—Continued

Proper shipping name	UN No.	Proposed addition(s)
Zinc ashes	UN1435	W100
Zinc peroxide	UN1516	W100
Zinc phosphide	UN1714	W32
Zinc powder *or* Zinc dust (PG I and III)	UN1436	W31
Zinc powder *or* Zinc dust (PG II)	UN1436	W31, W40
Zirconium hydride	UN1437	W31, W40
Zirconium, dry, *coiled wire, finished metal sheets, strip (thinner than 254 microns but not thinner than 18 microns).*	UN2858	W100
Zirconium, dry, *finished sheets, strip or coiled wire*	UN2009	W31
Zirconium picramate, wetted *with not less than 20 percent water, by mass*	UN1517	W31
Zirconium powder, dry	UN2008	W31
Zirconium powder, wetted *with not less than 25 percent water (a visible excess of water must be present) (a) mechanically produced, particle size less than 53 microns; (b) chemically produced, particle size less than 840 microns.*	UN1358	W31, W40
Zirconium scrap	UN1932	W31

Amendments to column (9) quantity limitations:

Section 172.101(j) describes column (9) of the HMT and the quantity limitations for specific entries. Furthermore, columns (9A) and (9B) specify the maximum quantities that may be offered for transportation in one package by passenger-carrying aircraft or passenger-carrying rail car (column (9A)) or by cargo-only aircraft (column (9B)). The indication of "forbidden" means the material may not be offered for transportation or transported in the applicable mode of transport.

In this NPRM, PHMSA proposes for column (9B) a quantity limit of 75 kg for "UN 0501, Propellant, solid, Division 1.4C." Previously, column (9B) forbid the transport of UN 0501 by cargo-only aircraft. This new quantity limit is consistent with the authorized quantity limit found in the ICAO Technical Instructions. In a working paper submitted at the 25th meeting the ICAO DGP, it was noted that while all other Division 1.4C explosives listed in the table were forbidden on passenger aircraft, only UN 0501 was also forbidden on cargo aircraft. A maximum net quantity of 75 kg per package was permitted on cargo aircraft for all other Division 1.4C explosives. It was also reported that a June 2015 meeting of the United Nations Working Group on Explosives had determined that there were no differences between the transport risks posed by UN 0501 and other Division 1.4C explosives.

Amendments to column (10) vessel stowage requirements:

Section 172.101(k) explains the purpose of column (10) of the HMT and prescribes the vessel stowage and segregation requirements for specific entries. Column (10) is divided into two columns: column (10A) [Vessel stowage] specifies the authorized stowage locations on board cargo and passenger vessels, and column (10B) [Other provisions] specifies special stowage and segregation provisions. The meaning of each code in column (10B) is set forth in § 176.84 of this subchapter.

Consistent with changes to Amendment 38–16 of the IMDG Code, PHMSA proposes numerous changes to the vessel stowage location codes shown in column (10A) of the HMT. The majority of these changes are a result of those made to the IMDG Code to ensure the safe transportation of substances requiring stabilization when transported by vessel. Table 7 contains the proposed changes listed in alphabetical order and showing the proper shipping name, UN identification number, current vessel stowage location code, and proposed vessel stowage location.

TABLE 7

Proper shipping name	UN No.	Current vessel stowage code	Proposed vessel stowage code
Acrolein dimer, stabilized	2607	A	C
Acrylonitrile, stabilized	1093	E	D
N-Aminoethylpiperazine	2815	A	B
Butyl acrylates, stabilized	2348	A	C
n-Butyl methacrylate, stabilized	2227	A	C
Butyl vinyl ether, stabilized	2352	B	C
1,2-Butylene oxide, stabilized	3022	B	C
Ethyl acrylate, stabilized	1917	B	C
Ethyl methacrylate, stabilized	2277	B	C
Isobutyl acrylate, stabilized	2527	A	C
Isobutyl methacrylate, stabilized	2283	A	C
Isoprene, stabilized	1218	E	D
Methacrylaldehyde, stabilized	2396	E	D
Methyl acrylate, stabilized	1919	B	C
Methyl isopropenyl ketone, stabilized	1246	B	C
Methyl methacrylate monomer, stabilized	1247	B	C
Potassium superoxide	2466	E	D
Propyleneimine, stabilized	1921	B	D
Radioactive material, uranium hexafluoride *non fissile or fissile-excepted*	2978	A	B
Radioactive material, uranium hexafluoride, fissile	2977	A	B

TABLE 7—Continued

Proper shipping name	UN No.	Current vessel stowage code	Proposed vessel stowage code
Styrene monomer, stabilized	2055	A	C
Vinyl acetate, stabilized	1301	B	C
Vinyl butyrate, stabilized	2838	B	C
Vinyl isobutyl ether, stabilized	1304	B	C
Vinylidene chloride, stabilized	1303	E	D
Vinyltoluenes, stabilized	2618	A	C

With the addition of a Division 6.1 subsidiary hazard to "UN 2815, N-Aminoethylpiperazine," "UN 2977, Radioactive material, uranium hexafluoride, fissile," and "UN 2978, Radioactive material, uranium hexafluoride *non fissile or fissile-excepted,*" PHMSA proposes that code "40," which indicates that the material must be stowed clear of living quarters, be added to column (10B) for these entries to remain consistent with the IMDG Code.

As a consequence of adding special provision 387, which addresses stabilization requirements to 52 existing entries in the HMT that are identified as requiring such, the IMO amended vessel stowage requirements for these entries. PHMSA proposes to add code "25" to column (10B) for the same 52 entries identified in Table 2. We note that the IMDG Code did not assign stowage provisions equivalent to code "25" to "UN 1167, Divinyl ether, stabilized" or "UN 2383, Dipropylamine." Stowage code "25" requires these materials to be protected from sources of heat. PHMSA believes the omission of this stowage requirement in the IMDG Code to be an oversight, and we propose to add stowage code "25" to these two HMR entries.

Code "28" requires materials to which this code is assigned to be stowed away from flammable liquids. In this NPRM, consistent with changes to the IMDG Code, PHMSA proposes to remove code "28" from column (10B) for the following HMT entries: "UN 2965, Boron trifluoride dimethyl etherate"; "UN 2988, Chlorosilanes, water-reactive, flammable, corrosive, n.o.s"; "UN 1183, Ethyldichlorosilane"; "UN 1242, Methyldichlorosilane"; "UN 3490, Toxic by inhalation liquid, water-reactive, flammable, n.o.s. *with an LC50 lower than or equal to 200 ml/m3 and saturated vapor concentration greater than or equal to 500 LC50*"; and "UN 1295, Trichlorosilane."

Appendix B to § 172.101:

Appendix B to § 172.101 lists marine pollutants regulated under the HMR. PHMSA proposes to revise the list of marine pollutants by adding six new entries to remain consistent with the IMDG Code. These changes are proposed to include those substances that were either assigned a "P" in the dangerous goods list or identified in the alphabetical index to Amendment 38–16 of the IMDG Code—based on review of evaluations for each individual material, and associated isomers where appropriate, performed by the Group of Experts on the Scientific Aspects of Marine Environmental Protection (GESAMP) and the GESAMP defining criteria for marine pollutants. The following entries are proposed to be added to the list of marine pollutants in appendix B to § 172.101: Hexanes; Hypochlorite solutions; Isoprene, stabilized; N-Methylaniline; Methylcyclohexane; and Tripropylene.

Section 172.102 special provisions:

Section 172.102 lists special provisions applicable to the transportation of specific hazardous materials. Special provisions contain packaging requirements, prohibitions, and exceptions applicable to particular quantities or forms of hazardous materials. In this NPRM, PHMSA proposes the following revisions to § 172.102 special provisions:

- *Special Provision 40:* Special provision 40 prescribes the criteria for classification of a "Polyester resin kit." PHMSA proposes to revise special provision 40 by authorizing a polyester resin kit to contain a Division 4.1 base material consistent with the new HMT entry "UN 3527, Polyester resin kit, *solid base material,* 4.1."
- *Special Provision 134:* Special provision 134 prescribes the applicability of the HMT entry "UN 3171, Battery-powered vehicle *or* Battery-powered equipment." PHMSA proposes to revise special provision 134 by amending the list of battery powered vehicle examples to include trucks, locomotives, bicycles (pedal cycles with an electric motor) and other vehicles of this type (*e.g.,* self-balancing vehicles or vehicles not equipped with at least one seating position), and self-propelled farming and construction equipment. In addition, PHMSA proposes to organize the structure of the special provision into paragraph form for ease of reading.
- *Special Provision 135:* Special provision 135 specifies that an internal combustion engine installed in a vehicle must be consigned to the entries "Vehicle, flammable gas powered" or "Vehicle, flammable liquid powered," as appropriate. PHMSA proposes to revise special provision 135 by clarifying that vehicles powered by both a flammable liquid and a flammable gas internal combustion engine must be consigned to the entry "Vehicle, flammable gas powered." In addition, PHMSA proposes to revise special provision 135 by clarifying that for the purpose of this special provision, a "vehicle" is a self-propelled apparatus designed to carry one or more persons or goods. A list of examples is provided.
- *Special Provision 157:* PHMSA proposes adding new special provision 157 and assigning it to "UN 3527, Polyester resin kit, solid base material." The special provision would allow the maximum net capacity for inner packagings of flammable solids in packing group II to be increased to no more than 5 kg (11 pounds) when the material is transported as a limited quantity.
- *Special Provision 181:* PHMSA proposes adding new special provision 181 and assigning it to "UN 3481, Lithium ion batteries contained in equipment"; "UN 3481, Lithium ion batteries packed with equipment"; "UN 3091, Lithium metal batteries contained in equipment"; and "UN 3091, Lithium metal batteries packed with equipment." The special provision would specify that when lithium cells or batteries packed with equipment and lithium cells or batteries contained in equipment are packed in the same package, the shipping paper (if used) and the package must use the "packed with" proper shipping name and UN number. Further, all packaging requirements applicable to both proper shipping names must be met and the total mass of cells or batteries in the package must not exceed the quantity

limits specified in columns (9A) and (9B), as applicable.

- *Special Provision 182:* PHMSA proposes adding new special provision 182 and assigning it to "UN 3072, Life-saving appliances, not self-inflating *containing dangerous goods as equipment*" to clarify that equipment containing only lithium batteries must be classified as either UN 3091 or UN 3481, as appropriate.
- *Special Provision 238:* Special provision 238 addresses the shipment of neutron radiation detectors. PHMSA proposes to revise special provision 238 to align with the UN Model Regulations special provision 373 by permitting the packaging to contain "absorbent" or "adsorbent" material where the previous requirement permitted "absorbent" material only.
- *Special Provision 369:* Special provision 369 prescribes classification criteria, consignment instructions and transport conditions for "UN 3507, Uranium hexafluoride, radioactive material, excepted package, *less than 0.1 kg per package, non-fissile or fissile-excepted.*" PHMSA proposes to revise special provision 369 in conjunction with revising the primary classification for UN 3507 from Class 8 to Division 6.1. Specifically, PHMSA proposes to clarify that this radioactive material in an excepted package possessing toxic and corrosive properties is classified in Division 6.1 with radioactive and corrosive subsidiary risks.
- *Special Provision 379:* PHMSA proposes adding new special provision 379 and assigning it to the HMT entries "UN 1005, Ammonia, anhydrous" and "UN 3516, Adsorbed gas, toxic, corrosive, n.o.s." This special provision is applicable to ammonia dispensers containing adsorbed ammonia, which are used to reduce polluting nitrogen oxide emissions from automobiles. The UN Sub-Committee found that the substance contained in the receptacles did not meet any criteria for classification in the Model Regulations, but it acknowledged that the substance did fit the recent definition of an adsorbed gas. Based on the stability of adsorption under normal transport conditions, an exception for these dispensers was adopted subject to appropriate packaging conditions. These materials are normally forbidden for transport by air on passenger and cargo aircraft; however, consistent with the ICAO Technical Instructions, PHMSA proposes to authorize them on cargo aircraft subject to the transport conditions prescribed in the special provision with additional approval of the Associate Administrator.
- *Special Provision 387:* PHMSA proposes adding new special provision 387 and assigning it to the four new "n.o.s." polymerizing substance HMT entries and to the 52 existing HMT entries that are identified as requiring stabilization. This special provision sets forth the transport conditions when stabilization, or prevention of polymerization, is provided through the use of a chemical inhibitor. When a substance is stabilized via use of a chemical inhibitor, it is important to ensure that the level of stabilization is sufficient to prevent the onset of a dangerous reaction under conditions normally incident to transportation. This special provision requires a determination that the degree of chemical stabilization employed at the time the package, IBC, or tank is offered for transport must be suitable to ensure that the sustained bulk mean temperature of the substance in the package, IBC, or tank will not exceed 50 °C (122 °F), under conditions normally incident to transportation. The special provision also specifies that temperature control is required at the point where chemical stabilization becomes ineffective at lower temperatures within the anticipated duration of transport. Consistent with the ICAO Technical Instructions, PHMSA proposes to clarify in special provision 387 that these substances are forbidden for transport by air when temperature control is required.
- *Special Provision 422:* PHMSA proposes to add new special provision 422 to the HMT entries "UN 3480, Lithium ion batteries *including lithium ion polymer batteries*"; "UN 3481, Lithium ion batteries contained in equipment *including lithium ion polymer batteries*"; "UN 3481, Lithium ion batteries packed with equipment *including lithium ion polymer batteries*"; "UN 3090, Lithium metal batteries *including lithium alloy batteries*"; "UN 3091, Lithium metal batteries contained in equipment *including lithium alloy batteries*"; and "Lithium metal batteries packed with equipment *including lithium alloy batteries.*" Special provision 422 states that the new lithium battery Class 9 label shown in § 172.447 is to be used for packages containing lithium batteries that require labels. Consistent with the UN Model Regulations, PHMSA proposes a transition period that would authorize labels conforming to requirements in place on December 31, 2016 to continue to be used until December 31, 2018. Class 9 placards, when used, must conform to the existing requirements in § 172.560.
- *Special Provision A210:* PHMSA proposes adding new special provision A210 and assigning it to the new italicized HMT entries "Catecholborane" and its synonym "1, 3, 2-Benzodioxaborole." Consistent with the ICAO Technical Instructions, this special provision clarifies that this substance is forbidden for transport by air and may only be transported on cargo aircraft with the approval of the Associate Administrator.
- *Special Provision A212:* PHMSA proposes adding new special provision A212 and assigning it to the to the HMT entry "UN 2031, Nitric acid *other than red fuming, with more than 20 percent and less than 65 percent nitric acid.*" Consistent with the ICAO Technical Instructions, this special provision allows sterilization devices containing nitric acid conforming to the conditions in the special provision to be offered for transportation by passenger aircraft irrespective of column (9A) of the § 172.101 HMT listing the material as forbidden.
- *Special Provision B134:* PHMSA proposes adding new special provision B134 and assigning it to UN Numbers 1309, 1376, 1483, 1869, 2793, and 2878. When in Large Packagings offered for transport by vessel, flexible or fiber inner packages containing these materials would need to be sift-proof and water-resistant, or fitted with a sift-proof and water-resistant liner. Consistent with the IMDG Code, these provisions will increase the ability of these packages to perform their containment function and reduce the likelihood of a fire on board cargo vessels when used to transport substances that either generate large amounts of heat or give off flammable or corrosive toxic gases on contact with water or moisture.
- *Special Provision B135:* PHMSA proposes adding new special provision B135 and assigning it to UN Numbers 1932, 2008, 2545, 2546, 2881, and 3189. When in Large Packagings offered for transport by vessel, flexible or fiber inner packages containing these materials would need to be hermetically sealed. Consistent with the IMDG Code, these provisions will increase the ability of these packages to perform their containment function and reduce the likelihood of a fire on board cargo vessels when used to transport substances that either generate large amounts of heat or give off flammable or corrosive toxic gases on contact with water or moisture.
- *IP Code 19:* PHMSA proposes to add a new IP Code 19 and assign it to UN 3531, UN 3532, UN 3553, and UN 3534. Consistent with international

regulations, this special provision would require that IBCs are designed and constructed to permit the release of gas or vapor, thereby preventing a build-up of pressure that could rupture the IBCs in the event of loss of stabilization

- *Special Provision N90:* Special provision N90 is assigned to the HMT entry "UN 3474, 1-Hydroxybenzotriazole, monohydrate" and prohibits the use of metal packages. PHMSA proposes, consistent with the UN Model Regulations, to revise special provision N90 by clarifying that the prohibition of metal packages does not include packagings constructed of other material with a small amount of metal (*e.g.,* metal closures or other metal fittings). However, packagings constructed with a small amount of metal must be designed such that the hazardous material does not contact the metal.
- *Special Provision N92:* PHMSA proposes adding special provision N92 to the four proposed polymerizing substance, n.o.s. entries. This special provision requires packages that are utilized for the transportation of polymerizing substances to be designed and constructed to permit the release of gas or vapor to prevent a build-up of pressure that could rupture the packagings in the event of loss of stabilization.
- *Special Provision W31:* PHMSA proposes adding new special provision W31 and assigning it to the 155 HMT entries identified in Table 6 in the "Amendments to column (7) special provisions" section of this rulemaking. With the addition of this special provision, PHMSA proposes to require packages assigned as such to be hermetically sealed when offered for transportation by vessel.

The proposed addition of W31 to these commodities harmonizes the HMR with changes made in Amendment 38–16 of the IMDG Code, as well as the transportation requirements of the HMR with the IMDG Code for other commodities where they were not previously harmonized. The IMDG Code has had provisions in place equivalent to proposed W31 (PP31) for certain commodities since at least 1998.[4] Other hazardous materials regulations (ICAO Technical Instructions, HMR, and UN Model Regulations) do not currently contain provisions similar to W31. Amendment 38–16 of the IMDG Code is adding this hermetically sealed packaging requirement to 15 entries in its Dangerous Goods List (some with multiple packing groups).

The proposed amendment would reduce the risk of fire on board cargo vessels carrying hazardous materials that can react dangerously with the ship's available water and carbon dioxide fire extinguishing systems. Some of the hazardous materials for which PHMSA is proposing to amend the vessel transportation packaging requirements react with water or moisture generating excessive heat or releasing toxic or flammable gases. Common causes for water entering into the container are: water entering through ventilation or structural flaws in the container; water entering into the containers placed on deck or in the hold in heavy seas; and water entering into the cargo space upon a ship collision or leak. If water has already entered the container, the packaging is the only protection from a potential fire.

In this NPRM, PHMSA proposes to strengthen the ability of these packages transporting water-reactive substances. PHMSA anticipates this proposed amendment could result in additional costs to domestic-only shippers but not to those shippers transporting such goods internationally. We assume that all shippers that ship hazardous materials internationally will incorporate IMDG Code-compliant packaging requirements into their business practices. These proposed amendments will increase costs for some domestic shipments of affected commodities and will require materials currently transported in packaging not already hermetically sealed to be thus packaged. Adoption of these provisions will increase the ability of these packages to perform their containment function and reduce the likelihood of a fire on board cargo vessels when used to transport substances that either generate large amounts of heat or give off flammable or toxic gases on contact with water or moisture. A 2011 Formal Safety Assessment (FSA) report presented to the IMO on shipping water-reactive materials by vessel[5] provides guidance regarding changes to the regulation of such shipments, as well as the net benefit of such changes. The FSA report notes that analysis of the documented cases of fire at sea indicates that the cause of the accidents is often difficult or impossible to determine. Although the cargo space is in some cases identified as the origin of the fire, the originating container is only identifiable in rare instances, and thus, there is no reliable data on the involvement of water-reactive materials in these fires. Additionally, in most cases, fires that start do not exceed the containment of the container itself and extinguish on their own. These self-extinguishing fires are usually not detected until the container is unloaded at its destination and, thus, are rarely documented in any relation to vessel or mode of shipment.[6]

Regarding the cost of reducing the risk of fire from water-exposure of water-reactive materials by requiring water-resistant packaging, the FSA report concluded that the costs in relation to the amount of affected goods is likely to be high.[7] However, the FSA expect that this measure will affect only a small number of goods, which are transported in small amounts, so that the costs in relation to the *total* amount of all transported goods is likely to be low.[8] PHMSA recognizes that both the FSA report and our own Regulatory Impact Analysis lack quantitative data on the true cost of this proposal, as well as the amount of these hazardous materials currently transported by vessel. We are specifically soliciting comment addressing any estimates of the cost of compliance with these amendments and any quantitative data on the amounts of the commodities affected by this proposal that are currently offered for transportation by domestic vessel.

- *Special Provision W32:* PHMSA proposes adding new special provision W32 and assigning it to 38 HMT entries identified in Table 6 in the "Amendments to column (7) special provisions" section of this rulemaking. With the addition of this special provision, PHMSA proposes to require packages assigned this special provision to be hermetically sealed, except for solid fused material, when offered for transportation by vessel. The 38 entries to which this addition are proposed are already required to be packaged in this manner in accordance with the IMDG Code through a modified PP31 (when compared to the PP31 mentioned in the W31 discussion above) assigned to various packing instructions. See the comments in the W31 discussion above for more discussion on the reasons for this proposed amendment.
- *Special Provision W40:* PHMSA proposes adding new special provision W40 and assigning it to 38 HMT entries identified in Table 6 in the "Amendments to column (7) special provisions" section of this rulemaking.

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[4] These provisions have potentially been in place before 1998. PHMSA reviewed hard copy IMDG Codes dating back to 1998 but was unable to locate the origin of these provisions.

[5] International Maritime Organization, 2011. "Stowage of Water-Reactive Materials—Report of the Formal Safety Assessment—Submitted by Germany." Report No. SO–ER 2009.267A.

[6] Ibid, p. 24.

[7] Ibid. p. 78.

[8] Ibid, p. 78.

With the addition of this special provision, PHMSA proposes to prohibit the use of bags when offered for transportation by vessel. See the comments in the W31 discussion above for more discussion on the reasons for this proposed amendment.

- *Special Provision W100:* PHMSA proposes adding new special provision W100 and assigning it to 27 HMT entries identified in Table 6 in the "Amendments to the column (7) special provisions" section of this rulemaking. With the addition of this special provision, PHMSA proposes to require flexible, fiberboard, or wooden packagings that are assigned this special provision to be sift-proof and water-resistant, or to be fitted with a sift-proof and water-resistant liner. These proposed amendments are intended to ensure that water-reactive materials transported by vessel are in packages that provide an appropriate level of protection from the ingress of water. See the comments in the W31 discussion above for more discussion on the reasons for this proposed amendment.

Section 172.407

Section 172.407 prescribes specifications for labels. On January 8, 2015, PHMSA published a final rule [Docket No. PHMSA–2013–0260 (HM–215M); 80 FR 1075] that required labels to have a solid line forming the inner border 5 mm from the outside edge of the label and a minimum line width of 2 mm. Transitional exceptions were provided allowing labels authorized prior to this rulemaking to be used until December 31, 2016.

The rulemaking authorized a reduction in label dimensions and features if the size of the packaging so requires. This allowance for reduction in label dimensions, consistent with the requirements for standard size labels, was contingent on the solid line forming the inner border remaining 5 mm from the outside edge of the label and the minimum width of the line remaining 2 mm. PHMSA has become aware that maintaining these inner border size requirements, while reducing the size of other label elements, may potentially result in the symbols on the reduced size labels no longer being identifiable. Consequently, we are proposing to revise paragraph (c)(i) to remove the existing inner border size requirements for reduced dimension labels and authorizing the entire label to be reduced proportionally.

In the same January 8, 2015 final rule, PHMSA authorized the continued use of a label in conformance with the requirements of this paragraph in effect on December 31, 2014, until December 31, 2016. PHMSA has been made aware that the transition period provided may not be sufficient to allow the regulated community to implement necessary changes to business practices or to deplete inventories of previously authorized labels. PHMSA is proposing to extend the transition date provided in paragraph (c)(1)(iii) until December 31, 2018 for domestic transportation in order to provide additional time for implementation and depletion of existing stocks of labels.

Section 172.447

PHMSA proposes to create a new section containing a new Class 9 hazard warning label for lithium batteries. The label would consist of the existing Class 9 label with the addition of a figure depicting a group of batteries with one broken and emitting a flame in the lower half. This label would appear on packages containing lithium batteries required to display hazard warning labels and is intended to better communicate the specific hazards posed by lithium batteries. This action is consistent with the most recent editions of the UN Model Regulations, the ICAO Technical Instructions, and the IMDG Code. Packages of lithium batteries displaying the existing Class 9 label may continue to be used until December 31, 2018. We propose this transition period to allow shippers to exhaust existing stocks of labels and pre-printed packagings. We are not proposing any modifications to the existing Class 9 placard or the creation of a Class 9 placard specifically for cargo transport units transporting lithium batteries. PHMSA solicits comment on the appropriateness of this transition period.

Section 172.505

Section 172.505 details the transport situations that require subsidiary placarding. Uranium hexafluoride is a volatile solid that may present both chemical and radiological hazards. It is one of the most highly soluble industrial uranium compounds and, when airborne, hydrolyzes rapidly on contact with water to form hydrofluoric acid (HF) and uranyl fluoride (UO_2F_2).[9]

As previously discussed in the review of changes to § 172.102, the UN Sub-Committee determined it necessary that a 6.1 subsidiary hazard be added to the Dangerous Goods List of uranium hexafluoride entries. Currently, in addition to the radioactive placard which may be required by § 172.504(e), each transport vehicle, portable tank, or freight container that contains 454 kg (1,001 pounds) or more gross weight of non-fissile, fissile-excepted, or fissile uranium hexafluoride must be placarded with a corrosive placard on each side and each end. PHMSA proposes to add a requirement for these shipments currently requiring corrosive subsidiary placards to also placard with 6.1 poison or toxic placards. PHMSA believes the addition of this requirement will provide important hazard communication information in the event of a release of uranium hexafluoride.

Part 173

Section 173.4a

Section 173.4a prescribes transportation requirements for excepted packages. In this NPRM, consistent with changes to the UN Model Regulations, PHMSA proposes to amend paragraph (e)(3) to allow required absorbent materials to be placed in either the intermediate or outer packaging. PHMSA believes this change will provide shippers of excepted packages with increased flexibility in choosing packaging configurations, while maintaining the current level of safety for the transportation of these small amounts of hazardous materials.

Section 173.9

Section 173.9 prescribes requirements for the fumigant marking. In this NRPM, PHMSA proposes to amend § 173.9 to require that the fumigant marking and its required information are capable of withstanding a 30-day exposure to open weather conditions. This requirement is consistent with the survivability requirements for placards found in § 172.519. Amendment 38–16 of the IMDG Code was amended to require the fumigant marking to be capable of surviving three months immersion in the sea, which is consistent with IMDG Code requirements for placard survivability. PHMSA believes ensuring that the fumigant marking and its required information are robust enough to handle conditions normally incident to transportation will ensure the proper information is conveyed to those needing it. Therefore, we are proposing amendments to this section consistent with the survivability requirements for placards.

Section 173.21

Section 173.21 describes situations in which the offering for transport or transportation of materials or packages is forbidden. Examples include materials designated as "Forbidden" in column (3) of the HMT; electrical devices that are likely to generate sparks and/or a dangerous amount of heat; and materials that are likely to decompose or polymerize and generate dangerous quantities of heat or gas during decomposition or polymerization. In § 173.21, PHMSA proposes to lower the temperature threshold at which a polymerizing substance is forbidden for transport, unless the material is stabilized or inhibited, from 54 °C (130 °F) to 50 °C (122 °F) and to amend the table in paragraph (f)(1) to accommodate the specific temperature controls applicable to polymerizing substances. This 50 °C (122 °F) temperature is consistent with existing requirements for Division 4.1 (Self-reactive) and Division 5.2 (Organic peroxide) hazardous materials, as well as the 19th Revised Edition of UN Model Regulations for the transport of polymerizing substances in packages and IBCs, which requires temperature control in transport if the SAPT is 45 °C (113 °F) only for polymerizing substances offered for transport in portable tanks. We are not proposing to adopt a different temperature threshold before temperature control is required for portable tanks transporting polymerizing substances. At this time, we believe there is not sufficient data to support a different threshold for polymerizing substances in portable tanks. Further, we believe maintaining a single SADT/SAPT for temperature controls for all relevant materials (*i.e.,* self-reactives, organic peroxides, and polymerizing substances) and all packaging sizes (*i.e.,* non-bulk, IBC, and bulk) is less confusing for the user.

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[9] *https://www.epa.gov/sites/production/files/2014-11/documents/tsd58.pdf.*

Section 173.40

Section 173.40 provides general packaging requirements for toxic materials packaged in cylinders. In this NPRM, PHMSA proposes to revise paragraph (a)(1) to clarify that TC, CTC, CRC, and BTC cylinders authorized in § 171.12, except for acetylene cylinders, may be used for toxic materials.

Section 173.50

Section 173.50 provides definitions for the various divisions of Class 1 (Explosive) materials referenced in part 173 subpart C. Paragraph (b) of this section notes that Class 1 (Explosive) materials are divided into six divisions and that the current definition of Division 1.6 states that "this division comprises articles which contain only extremely insensitive substances." PHMSA proposes to amend the definition of Division 1.6 to note that the division is made up of articles that predominately contain extremely insensitive substances. Consistent with the recent changes to the UN Model Regulations, the new definition means that an article does not need to contain solely extremely insensitive substances to be classified as a Division 1.6 material.

Section 173.52

Section 173.52 contains descriptions of classification codes for explosives assigned by the Associate Administrator. These compatibility codes consist of the division number followed by the compatibility group letter. Consistent with changes proposed to § 173.50 and those made in the UN Model Regulations, PHMSA proposes to amend the descriptive text for the 1.6N classification code entry in the existing table in this section to indicate that these explosives are articles predominantly containing extremely insensitive substances.

Section 173.62

Section 173.62 provides specific packaging requirements for explosives. Consistent with the UN Model Regulations, PHMSA proposes to revise § 173.62 relating to specific packaging requirements for explosives.

In paragraph (b), in the Explosives Table, the entry for "UN 0510, Rocket motors" would be added and assigned Packing Instruction 130 consistent with other rocket motor entries.

In paragraph (c), in the Table of Packing Methods, Packing Instruction 112(c) would be revised by adding a particular packaging requirement applicable to UN 0504 requiring that metal packagings must not be used. It would also be clarified that the prohibition of metal packagings does not include packagings constructed of other material with a small amount of metal (*e.g.,* metal closures or other metal fittings). Packing Instruction 114(b) would be revised to clarify in the particular packaging requirement applicable to UN 0508 and UN 0509 that the prohibition of metal packagings does not include packagings constructed of other material with a small amount of metal (*i.e.,* metal closures or other metal fittings). Packing Instruction 130 would be revised by adding UN 0510 to the list of large and robust explosives articles that may be transported unpackaged. PHMSA proposes to add UN 0502 to Packing Instruction P130. This addition corrects an existing error in the HMR. Packing Instruction 130 is referenced for UN 0502, but there is no mention of UN 0502 in the actual instruction. Packing Instruction 137 would be revised by amending the particular packaging instruction applicable to UN Numbers 0059, 0439, 0440, and 0441 by replacing the marking requirement "THIS SIDE UP" with a reference to the package orientation marking prescribed in § 172.312(b).

Section 173.121

Section 173.121 provides criteria for the assignment of packing groups to Class 3 materials. Paragraph (b)(iv) provides criteria for viscous flammable liquids of Class 3, such as paints, enamels, lacquers and varnishes, to be placed in packing group III on the basis of their viscosity, coupled with other criteria. In this NPRM, and consistent with the changes to the UN Model regulations, PHMSA proposes to amend paragraph (b)(iv) to include additional viscosity criteria that can be used as an alternative where a flow cup test is unsuitable. Many products of the paint and printing ink industry are thixotropic in nature, which means that they are viscous at rest but become thinner on application of shear or agitation (such as stirring or brushing). During transport these viscous flammable liquids have the potential to thin under movement, but their viscosity cannot be properly characterized using a flow cup test since they will not run through the cup under static conditions. Additionally, PHMSA proposes to include an explanatory footnote to the existing table of viscosity and flash point to assist users of the section in determining kinematic viscosity.

Section 173.124

Section 173.124 outlines defining criteria for Divisions 4.1 (Flammable solid), 4.2 (Spontaneously combustible), and 4.3 (Dangerous when wet material). Division 4.1 (Flammable solid) includes desensitized explosives, self-reactive materials, and readily combustible solids. The UN Model Regulations adopted amendments to include polymerizing materials to the list of materials that meet the definition of Division 4.1. Transport conditions for polymerizing materials are not new under the HMR. Section § 173.21 presently contains approval provisions for the transport of polymerizing materials. Unlike the present HMR requirements, the classification requirements adopted in the UN Model Regulations do not require testing to determine the rate of vapor production when heated under confinement. This rate should be the deciding factor when determining whether a polymerizing substance should be authorized for transportation in an IBC or portable tank. PHMSA proposes to add polymerizing materials to the list of materials that meet the definition of

Division 4.1 with the additional requirement that that polymerizing substances are only authorized for transport if they pass the UN Test Series E at the "None" or "Low" level when tested for heating under confinement, or other equivalent test method. Given concerns with potential test equipment issues (*i.e.,* clogging) when subjecting polymerizing materials to the UN Test Series E, PHMSA solicits comment on other equivalent test methods.

Specifically, we propose to add a new paragraph, (a)(4), that defines polymerizing materials generally and specifies defining criteria. Polymerizing materials are materials that are liable to undergo an exothermic reaction resulting in the formation of polymers under conditions normally encountered in transport. Additionally, polymerizing materials in Division 4.1 have a self-accelerating polymerization temperature of 75 °C (167 °F) or less; have an appropriate packaging determined by successfully passing the UN Test Series E at the "None" or "Low" level or by an equivalent test method; exhibit a heat of reaction of more than 300 J/g; and do not meet the definition of any other hazard class.

Section 173.165

Section 173.165 prescribes the transport and packaging requirements for polyester resin kits. PHMSA proposes to revise § 173.165 by adding the requirements for polyester resin kits with a flammable solid base consistent with the new HMT entry "UN 3527, Polyester resin kit, solid base material, 4.1."

Section 173.185

Section 173.185 prescribes transportation requirements for lithium batteries. Paragraph (c) describes alternative packaging and alternative hazard communication for shipments of up to 8 small lithium cells or 2 small batteries per package (up to 1 gram per lithium metal cell, 2 grams per lithium metal battery, 20 Wh per lithium ion cell, and 100 Wh per lithium ion battery). Specifically, PHMSA proposes to amend paragraph (c) to require strong outer packagings for small lithium cells or batteries to be rigid and to replace the current text markings that communicate the presence of lithium batteries and the flammability hazard that exists if damaged with a single lithium battery mark. Additionally, the package must be of adequate size that the lithium battery mark can be displayed on one side of the package without folding. PHMSA also proposes to require the lithium battery mark to appear on packages containing lithium cells or batteries, or lithium cells or batteries packed with, or contained in, equipment when there are more than two packages in the consignment. This requirement would not apply to a package containing button cell batteries installed in equipment (including circuit boards) or when no more than four lithium cells or two lithium batteries are installed in the equipment. We are further clarifying what is meant by the term "consignment" by defining the term used in § 173.185 as one or more packages of hazardous materials accepted by an operator from one shipper at one time and at one address, receipted for in one lot and moving to one consignee at one destination address.

Under current HMR requirements, a package of cells or batteries that meets the requirements of § 173.185(c) may be packed in strong outer packagings that meet the general requirements of §§ 173.24 and 173.24a instead of the standard UN performance packaging. Lithium batteries packed in accordance with § 173.185(c) must be packed in strong outer packagings that meet the general packaging requirements of §§ 173.24 and 173.24a and be capable of withstanding a 1.2 meter (3.9 ft) drop test without damage to the cells or batteries contained in the package, shifting of the contents that would allow battery to battery or cell to cell contact, or release of contents. Alternative hazard communication requirements also apply. The Class 9 label is replaced with text indicating the presence of lithium batteries; an indication that the package must be handled with care and that a flammability hazard exists if damaged; procedures to take in the event of damage; and a telephone number for additional information. Instead of a shipping paper, the shipper can provide the carrier with an alternative document that includes the same information as provided on the package.

In this NPRM, PHMSA proposes to replace the existing text marking requirements in § 173.185(c)(3) with a standard lithium battery mark for use in all transport modes and to remove the requirement in § 173.185(c)(3) for shippers to provide an alternative document. The lithium battery mark communicates key information (*i.e.,* the package contents and that a flammability hazard exists if damaged). The mark utilizes recognizable symbols that permit transport workers and emergency responders to quickly ascertain the package contents and take appropriate action. A single mark that is understood and accepted for all transport modes will increase the effectiveness. PHMSA proposes a transition period of December 31, 2018, to provide adequate time for shippers to transition the new lithium battery mark and exhaust existing stocks of preprinted packagings or markings. The current documentation requirement is redundant given the existing marking requirement and provides minimal additional safety value to that provided by the mark.

At the 49th session of UN Sub-Committee, a late design revision to the lithium battery mark was adopted to authorize the mark on a background of "suitable contrasting color" in addition to white. This is consistent with design requirements for limited quantity marks and other marks in the Model Regulations. We are proposing to also allow the mark on a background of suitable contrasting color in addition to white.

Additionally, PHMSA proposes to amend § 173.185(c)(2) to specify that outer packagings used to contain small lithium batteries must be rigid and of adequate size so the handling mark can be affixed on one side without the mark being folded. The HMR currently do not prescribe minimum package dimensions or specific requirements for package performance other than the requirements described in §§ 173.24 and 173.24a. We are aware of several instances in which either the package dimensions were not adequate to accommodate the required marks and labels or the package was not sufficiently strong to withstand the rigors of transport. These proposals will enhance the communication and recognition of lithium batteries and better ensure that packaging is strong enough to withstand normal transport conditions.

PHMSA proposes amendments to § 173.185(e) to permit the transport of prototype and low production runs of lithium batteries contained in equipment. These proposals are mostly consistent with amendments adopted into the 19th Revised Edition of the UN Model Regulations and Amendment 38–16 to the IMDG Code, which authorize the transportation of prototype and low production runs of lithium batteries contained in equipment in packaging tested to the PG II level. The ICAO TI authorizes the transportation of prototype and low production runs of lithium batteries contained in equipment in packaging tested to the PG I level. PHMSA proposes to continue to require prototype and low production batteries to be placed in packaging tested to the PG I performance level. PHMSA believes that the higher integrity packaging provides an additional layer of protection for cells and batteries not otherwise subjected to the UN design tests.

Consistent with changes to the UN Model Regulations, the IMDG Code, and the ICAO Technical Instructions, PHMSA proposes to add new paragraph (e)(7) to require shipments of low production runs and prototype lithium batteries to note conformance with the requirements of § 173.185(e) on shipping papers.

Additionally, PHMSA proposes amendments to § 173.185(f)(4) to harmonize with a requirement in the 19th Revised Edition of the UN Model Regulations that the "Damaged/defective lithium ion battery" and/or "Damaged/defective lithium metal battery" marking as appropriate be in characters at least 12 mm (.47 inch) high.

Section 173.217

Section 173.217 establishes packaging requirements for dry ice (carbon dioxide, solid). Paragraph (c) prescribes additional packaging requirements for air transport. Consistent with the ICAO Technical Instructions, in this NPRM, PHMSA proposes to remove the term "other type of pallet" in paragraph (c)(3) that excepts dry ice being used as a refrigerant for other non-hazardous materials from the quantity limits per package shown in columns (9A) and (9B) of the § 172.101 HMT.

A working paper submitted to the October 2014 ICAO Dangerous Goods Panel meeting noted that the term "other type of pallet" was used in conjunction in various parts of the ICAO Technical Instructions with the terms "package," "overpack," or "unit load device," which were all defined in the ICAO Technical Instructions. The ICAO Technical Instructions do not have a specific definition for "other type of pallet," as the term is understood to represent devices that are widely used in transport, such as wooden skids or pallets that allow the use of a forklift for ease of moving packages around and to prevent damage to the contents of the skid or pallet. The definition for "overpack" already addresses the intent of the term "other type of pallet," so it was agreed that the term "other type of pallet" was redundant and that references to it would be removed.

Section 173.220

Section 173.220 prescribes transportation requirements and exceptions for internal combustion engines, vehicles, machinery containing internal combustion engines, battery-powered equipment or machinery, and fuel cell-powered equipment or machinery. The UN Model Regulations adopted amendments to the existing UN 3166 engine and vehicle entries during the last biennium. These changes are continuations of efforts undertaken by the UN Sub-Committee to ensure appropriate hazard communication is provided for engines containing large quantities of fuels.

The 17th Edition of the UN Model Regulations added special provision 363, which required varying levels of hazard communication depending on the type and quantity of fuel present, in attempts to ensure the hazards associated with engines containing large quantities of fuel were sufficiently communicated. PHMSA did not adopt the provisions found in special provision 363 at the time they were introduced.

As previously discussed in the review of the new proposed HMT entries, the existing UN 3166 identification number was maintained for the various vehicle entries in the Model Regulations, and three new UN identification numbers and proper shipping names were created for engines or machinery internal combustion and were assigned a hazard classification based on the type of fuel used. The three new UN numbers and proper shipping names are as follows: A Class 3 entry "UN 3528, Engine, internal combustion engine, flammable liquid powered, *or* Engine fuel cell, flammable liquid powered, *or* Machinery, internal combustion, flammable liquid powered, *or* Machinery, fuel cell, flammable liquid powered"; a Division 2.1 entry "UN 3529, Engine, internal combustion engine, flammable gas powered, *or* Engine fuel cell, flammable gas powered, *or* Machinery, internal combustion, flammable gas powered, *or* Machinery, fuel cell, flammable gas powered"; and a Class 9 entry "UN 3530, Engine, internal combustion, *or* Machinery, internal combustion."

Consistent with the UN Model Regulations, PHMSA proposes to add to the HMR the new UN identification numbers and proper shipping names for engines and machinery. PHMSA proposes to maintain the existing transportation requirements and exceptions for engines and machinery found in § 173.220 for all modes of transportation other than vessel. To harmonize as closely as possible with Amendment 38–16 of the IMDG Code, PHMSA proposes the following amendments to § 173.220: Amending paragraph (b)(1) to include a reference to engines powered by fuels that are marine pollutants but do not meet the criteria of any other Class or Division; amending paragraph (b)(4)(ii) to include a reference to the proposed new § 176.906 containing requirements for shipments of engines or machinery offered for transportation by vessel; amending paragraph (d) to authorize the transportation of securely installed prototype or low production run lithium batteries in engines and machinery by modes of transportation other than air; and adding paragraph (h)(3) to include references to existing and proposed exceptions for vehicles, engines, and machinery in §§ 176.905 and 176.906.

ICAO adopted a provision that requires battery powered vehicles that could be handled in other than an upright position to be placed into a strong rigid outer package. ICAO adopted this provision to ensure that small vehicles, particularly those powered by lithium batteries are adequately protected from damage during transport. PHMSA proposes to amend paragraphs (c) and (d) consistent with this requirement. While this international requirement is specific to air transport, we believe there is benefit to applying this requirement for transportation by all transport modes.

Section 173.221

Section 173.221 prescribes the packaging requirements for Polymeric beads (or granules), expandable, *evolving flammable vapor.* PHMSA proposes to add a procedure for declassification of polymeric beads, expandable. This exception is proposed to differentiate between polymeric beads made of materials that may present a risk for formation of a flammable atmosphere in a package and those that do not. When it can be demonstrated that no flammable vapor, resulting in a flammable atmosphere, is evolved by utilizing test U1—the test method for substances liable to evolve flammable vapors—of part III, sub-section 38.4.4 of the UN Manual of Tests and Criteria, polymeric beads, expandable need not be classed as Class 9 (UN 2211).

Section 173.225

Section 173.225 prescribes packaging requirements and other provisions for organic peroxides. Consistent with the UN Model Regulations, PHMSA proposes to revise the Organic Peroxide Table in paragraph (c) by amending the entries for: "Dibenzoyl peroxide," "tert-Butyl cumyl peroxide," "Dicetyl peroxydicarbonate," and "tert-Butyl peroxy-3,5,5-trimethylhexanoate." We propose to revise the Organic Peroxide IBC Table in paragraph (e) to maintain alignment with the UN Model Regulations by adding new entries for "tert-Butyl cumyl peroxide" and

"1,1,3,3-Tetramethylbutyl peroxy-2-ethylhexanoate, not more than 67%, in diluent type A" and adding a type 31HA1 IBC authorization to the existing entry for "Di-(2-ethylhexyl) peroxydicarbonate, not more than 62%, stable dispersion, in water." We are republishing the complete Organic Peroxide and Organic Peroxide IBC tables to ensure the proposed revisions are correctly inserted and adding the missing "UN" code to several identification numbers assigned to existing entries in the Organic Peroxide Table.

Section 173.301b

Section 173.301b contains additional general requirements for shipment of UN pressure receptacles. PHMSA proposes to amend paragraph (a)(2) to include the most recent ISO standard for UN pressure receptacles and valve materials for non-metallic materials in ISO 11114–2:2013. Additionally, we propose to amend paragraph (c)(1) to include the most recent ISO standard on cylinder valves ISO 10297:2014. This paragraph also contains end dates for when the manufacture of cylinders and service equipment is no longer authorized in accordance with the outdated ISO standard. Finally, we propose to amend § 173.301b(g) to amend a reference to marking requirements for composite cylinders used for underwater applications. The current reference to the "UW" marking in § 173.301b(g) direct readers to § 178.71(o)(17). The correct reference for the "UW marking is § 178.71(q)(18). We propose to make this editorial change in this NPRM.

Section 173.303

Section 173.303 prescribes requirements for charging of cylinders with compressed gas in solution (acetylene). PHMSA proposes to amend paragraph (f)(1) to require UN cylinders for acetylene use to comply with the current ISO standard ISO 3807:2013. This paragraph also contains end dates for when the manufacture of cylinders and service equipment is no longer authorized in accordance with the outdated ISO standard.

Section 173.304b

Section 173.304b prescribes filling requirements for liquefied gases in UN pressure receptacles. The UN Model Regulations amended packing instruction P200 by adding requirements for liquefied gases charged with compressed gases. In this NPRM, PHMSA proposes to amend § 173.304b specifically by adding a new paragraph (b)(5) to include filling limits when a UN cylinder filled with a liquefied gas is charged with a compressed gas. We are not proposing similar filling limits for DOT specification cylinders filled with a liquefied gas and charged with a compressed gas, as we feel the situation is adequately addressed by the requirements found in § 173.301(a)(8).

Section 173.310

Section 173.310 provides the transport conditions for certain specially designed radiation detectors containing a Division 2.2 (Non-flammable) gas. The 19th Revised Edition of the UN Model Regulations added a new special provision 378 applicable to radiation detectors containing certain Division 2.2 gases. Special provision 378 outlines conditions for the use of a non-specification pressure receptacle and strong outer packaging requirements. As § 173.310 currently prescribes similar transport conditions for radiation detectors containing Division 2.2 gases, we are not proposing to add a new special provision.

Consistent with special provision 378 of the UN Model Regulations, PHMSA proposes the following revisions to the transport conditions in § 173.310: [1] In the section header, clarify that Division 2.2 gases must be in non-refillable cylinders; [2] in (b), increase the maximum design pressure from 4.83 MPa (700 psig) to 5.00 MPa (725 psig) and increase the capacity from 355 fluid ounces (641 cubic inches) to 405 fluid ounces (731 cubic inches); [3] in new paragraph (d), require specific emergency response information to accompany each shipment and be available from the associated emergency response telephone number; [4] in new paragraph (e), require that transport in accordance with this section be noted on the shipping paper; and [5] in new paragraph (f), except radiation detectors, including detectors in radiation detection systems, containing less than 1.69 fluid ounces (50 ml) capacity, from the requirements of the subchapter if they conform to (a) through (d) of this section.

Section 173.335

Section 173.335 contains requirements for cylinders filled with chemicals under pressure. The 19th Revised Edition of the UN Recommendations includes new instructions in P200 and P206 on how to calculate the filling ratio and test pressure when a liquid phase of a fluid is charged with a compressed gas. PHMSA proposes to revise the requirements of § 173.335 for chemical under pressure n.o.s. to include a reference to § 173.304b, which specifies additional requirements for liquefied compressed gases in UN pressure receptacles. In another proposed amendment in this NPRM, PHMSA proposes to amend § 173.304b specifically by adding a new paragraph (b)(5) to include these filling and test pressure requirements consistent with the UN Recommendations.

Part 175

Section 175.10

Section 175.10 specifies the conditions for which passengers, crew members, or an operator may carry hazardous materials aboard an aircraft. Paragraph (a)(7) permits the carriage of medical or clinical mercury thermometers, when carried in a protective case in carry-on or checked baggage. Consistent with revisions to the ICAO Technical Instructions, in this NPRM, PHMSA proposes to revise paragraph (a)(7) by limiting thermometers containing mercury to checked baggage only. This revision was based on a proposal submitted to the ICAO DGP/25 meeting that highlighted two incidents involving leakage of mercury from thermometers carried in the cabin and addressed the cost and difficult process of cleaning a spill. The proposal noted that digital thermometers had become widely available, and as such, there was no longer a need to allow mercury thermometers in the cabin or cockpit. The Panel discussed whether mercury thermometers should also be banned from checked baggage but agreed to retain the provision for checked baggage on the basis that there were parts of the world where their use was more prevalent.

Section 175.25

Section 175.25 prescribes the notification that operators must provide to passengers regarding restrictions on the types of hazardous material they may or may not carry aboard an aircraft on their person or in checked or carry-on baggage. Passenger notification of hazardous materials restrictions addresses the potential risks that passengers can introduce on board aircraft. PHMSA's predecessor, the Materials Transportation Bureau, introduced passenger notification requirements in 1980 [Docket No. HM–166B; 45 FR 13087]. Although this section had been previously amended to account for ticket purchase or check-in via the Internet, new technological innovations have continued to outpace these provisions. Notwithstanding the several rounds of revisions, the rule remains unduly prescriptive.

The 2017–2018 ICAO Technical Instructions has removed prescriptive requirements concerning how the information concerning dangerous goods that passengers are forbidden to transport are required to be conveyed to passengers by removing references to "prominently displayed" and "in sufficient numbers." Additional ICAO Technical Instructions changes include removal of prescriptive requirements that the information be in "text or pictorial form" when checking in remotely, or "pictorial form" when not checking in remotely. ICAO's decision to move to a performance-based requirement will account for changes in technology as well as the unique characteristics of some air carrier operations. ICAO noted that these provisions lagged behind the latest technology and could sometimes hinder the effectiveness and efficiency of notifying passengers about hazardous materials. To account for the utilization of different technologies as well as air carrier specific differences in operating or business practices, ICAO adopted changes that require air carriers to describe their procedures for informing passengers about dangerous goods in their operations manual and/or other appropriate manuals.

PHMSA agrees with this approach and proposes to harmonize with the amendments made to the ICAO Technical Instructions part 7; 5.1. Harmonization is appropriate not only to account for evolving technologies or air carrier specific conditions, but also because we believe that this amendment will result in a more effective notification to passengers.

Under the proposed revisions to § 175.25, in accordance with 14 CFR parts 121 and 135, air carriers operating under 14 CFR parts 121 or 135 will need to describe in an operations manual and/or other appropriate manuals in accordance with the applicable provisions of 14 CFR. The manual(s) will be required to provide procedures and information necessary to allow personnel to implement and maintain their air carrier's specific passenger notification system. Aside from the manual provisions, all persons engaging in for hire air transportation of passengers will continue to be subject to § 175.25.

Section 175.33

Section 175.33 establishes requirements for shipping papers and for the notification of the pilot-in-command when hazardous materials are transported by aircraft. The pilot notification requirements of part 7;4.1.1.1 of the ICAO Technical Instructions include an exception for consumer commodities (ID8000) to allow for the average gross mass of the packages to be shown instead of the actual gross mass of each individual package. This exception is limited to consumer commodities offered to the operator by the shipper in a unit load device (ULD). Consistent with the ICAO Technical Instructions packing instruction applicable to consumer commodities (PI Y963), which permits the shipper to show on the shipping paper either the actual gross mass of each package or the average gross mass of all packages in the consignment, the notification to the pilot-in-command requirement for consumer commodities was revised to remove the exception applicability to ULDs only. This exception did not previously exist under the HMR. In this NPRM, PHMSA proposes to revise § 175.33(a)(3) by adding the text "For consumer commodities, the information provided may be either the gross mass of each package or the average gross mass of the packages as shown on the shipping paper." This revision would align the consumer commodity notification of the pilot-in-command requirements in the HMR with the ICAO Technical Instructions.

Section 175.900

Section 175.900 prescribes the handling requirements for air carriers that transport dry ice. Consistent with the ICAO Technical Instructions, PHMSA proposes to remove the term "other type of pallet" with regard to packages containing dry ice prepared by a single shipper. See "Section 173.217" of this rulemaking for a detailed discussion of the proposed revision.

Part 176

Section 176.83

Section 176.83 prescribes segregation requirements applicable to all cargo spaces on all types of vessels and to all cargo transport units. Paragraph (a)(4)(ii) has several groups of hazardous materials of different classes, which comprise a group of substances that do not react dangerously with each other and that are excepted from the segregation requirements of § 176.83. Consistent with changes made in Amendment 38–16 of the IMDG Code, PHMSA proposes to add a new group of hazardous materials that do not react dangerously with each other to this paragraph. The following materials are proposed for new paragraph (a)(4)(ii)(C); "UN 3391, Organometallic substance, solid, pyrophoric"; "UN 3392, Organometallic substance, liquid, pyrophoric"; "UN 3393, Organometallic substance, solid, pyrophoric, water-reactive"; "UN 3394, Organometallic substance, liquid, pyrophoric, water-reactive"; "UN 3395, Organometallic substance, solid, water-reactive"; "UN 3396, Organometallic substance, solid, water-reactive, flammable"; "UN 3397, Organometallic substance, solid, water-reactive, self-heating"; "UN 3398, Organometallic substance, liquid, water-reactive"; "UN 3399, Organometallic substance, liquid, water-reactive, flammable"; and "UN 3400, Organometallic substance, solid, self-heating."

Section 176.84

Section 176.84 prescribes the meanings and requirements for numbered or alpha-numeric stowage provisions for vessel shipments listed in column (10B) of the § 172.101 HMT. The provisions in § 176.84 are broken down into general stowage provisions, which are defined in the "table of provisions" in paragraph (b), and the stowage provisions applicable to vessel shipments of Class 1 explosives, which are defined in the table to paragraph (c)(2). PHMSA proposes to create a new stowage provision 149 and assign it to the new UN 3528 engines or machinery powered by internal combustion engine flammable liquid entry. This new stowage provision will require engines or machinery containing fuels with a flash point equal or greater than 23 °C (73.4 °F) to be stowed in accordance with the stowage requirements of stowage Category A. Engines and machinery containing fuels with a flash point less than 23 °C (73.4 °F) are required to comply with the requirements of stowage Category E.

Additionally, consistent with Amendment 38–16 of the IMDG Code, PHMSA proposes to create a new stowage provision 150 to replace existing stowage provision 129 for "UN 3323, Radioactive material, low specific activity (LSA–III) *non fissile or fissile excepted.*" This proposed new stowage provision requires that any material that is classified as UN 3323, which is either uranium metal pyrophoric or thorium metal pyrophoric, be stowed in accordance with stowage Category D requirements.

Section 176.905

Section 176.905 prescribes transportation requirements and exceptions for vessel transportation of motor vehicles and mechanical equipment. PHMSA proposes to revise § 176.905 to update the transport requirements and exceptions for vehicles transported by vessel. These changes are necessary to remove references to machinery (see proposed § 176.906) and to maintain consistency with changes made in Amendment 38–16 of the IMDG Code.

The following changes are proposed to the transport requirements for vehicles transported by vessel: [1] In paragraph (a)(2) for flammable liquid powered vehicles, the requirement that flammable liquid must not exceed 250 L (66 gal) unless otherwise approved by the Associate Administrator; [2] in paragraph (a)(4), the authorization to transport vehicles containing prototype or low production run batteries securely installed in vehicles; [3] also in paragraph (a)(4), the requirement that damaged or defective lithium batteries must be removed and transported in accordance with § 173.185(f); and [4] in paragraph (i)(1)(i), the inclusion of text to ensure lithium batteries in vehicles stowed in a hold or compartment designated by the administration of the country in which the vessel is registered as specially designed and approved for vehicles have lithium batteries that have successfully passed the tests found in the UN Manual of Tests and Criteria (except for prototypes and low production runs).

Section 176.906

Consistent with changes made in Amendment 38–16 of the IMDG Code, PHMSA proposes the creation of a new section § 176.906 to prescribe transportation requirements for engines and machinery. Requirements found in paragraphs (a)–(h) are identical to existing requirements for engines and machinery contained in § 176.905, and their reproduction in this section is made necessary by the splitting of the provisions for engines/machinery and vehicles. Paragraph (i) contains exceptions that are divided into two separate categories: [1] Engines and machinery meeting one of the conditions provided in (i)(1), which are not subject to the requirements of subchapter C of the HMR; and [2] engines and machinery not meeting the conditions provided in (i)(1), which are subject to the requirements found in (i)(2) that prescribe general conditions for transport and varying degrees of hazard communication required for engines and machinery based on the actual fuel contents and capacity of the engine or machinery.

A summary of the proposed hazard communication requirements for vessel transportation of engines and machinery that are not empty of fuel based on fuel content and capacity are provided in Tables 8 and 9. The additional hazard communication requirements column indicates requirements that would differ from existing hazard communication requirements for engines or machinery.

TABLE 8—LIQUID FUELS CLASS 3 (UN 3528) AND CLASS 9 (UN 3530)

Contents	Capacity	Additional hazard communication requirements
≤60 L	Unlimited	Transport Document.
>60 L	Not more than 450 L	Label, Transport Document.
>60 L	More than 450 L but not more than 3000 L	Labeled on two opposing sides, Transport Document.
>60 L	More than 3000 L	Placarded on two opposing sides, Transport Document.

TABLE 9—GASEOUS FUELS DIVISION 2.1 (UN 3529)

Water capacity	Additional hazard communication requirements
Not more than 450 L	Label, Transport Document.
More than 450 L but not more than 1000 L	Labeled on two opposing sides, Transport Document.
More than 1000 L	Placarded on two opposing sides, Transport Document.

Part 178

Section 178.71

Section 178.71 prescribes specifications for UN pressure receptacles. Consistent with the UN Model Regulations, PHMSA proposes to amend paragraphs (d)(2), (h), (k)(2), and (l)(1) to reflect the adoption of the latest ISO standards for the design, construction, and testing of gas cylinders and their associated service equipment. In paragraph (l)(1), we propose to require that composite cylinders be designed for a design life of not less than 15 years, as well as that composite cylinders and tubes with a design life longer than 15 years must not be filled after 15 years from the date of manufacture, unless the design has successfully passed a service life test program. The service life test program must be part of the initial design type approval and must specify inspections and tests to demonstrate that cylinders manufactured accordingly remain safe to the end of their design life. The service life test program and the results must be approved by the competent authority of the country of approval that is responsible for the initial approval of the cylinder design. The service life of a composite cylinder or tube must not be extended beyond its initial approved design life. These paragraphs also contain proposed end dates for when the manufacture of cylinders and service equipment is no longer authorized in accordance with the outdated ISO standard.

Additionally, consistent with the UN Model Regulations, PHMSA proposes to revise paragraph (o)(2) to adopt the current ISO standard relating to material compatibility and to add paragraph (g)(4) to adopt the current ISO standard relating to design, construction, and testing of stainless steel cylinders with an Rm value of less than 1,100 MPa.

Finally, we propose to revise paragraphs (q) and (r) to indicate the required markings for composite cylinders and tubes with a limited design life of 15 years or for cylinders and tubes with a design life greater than 15 years, or a non-limited design life.

Section 178.75

Section 178.75 contains specifications for Multiple-element gas containers (MEGCs). Consistent with the UN Model Regulations, PHMSA proposes to renumber existing paragraph (d)(3)(iv) as (d)(3)(v) and to add a new paragraph (d)(3)(iv) to incorporate ISO 9809–

4:2014 for stainless steel cylinders with an Rm value of less than 1,100 MPa.

Section 178.1015

Section 178.1015 prescribes general standards for the use of flexible bulk containers (FBCs). Consistent with changes to the UN Model Regulations, PHMSA proposes to revise paragraph (f) to require that FBCs be fitted with a vent that is designed to prevent the ingress of water in situations where a dangerous accumulation of gases may develop absent such a vent. It is our understanding that only one particular material authorized for transportation in FBCs—UN3378, Sodium carbonate peroxyhydrate—is known to decompose causing a dangerous accumulation of gas.

Part 180

Section 180.205

Section 180.205 outlines general requirements for requalification of specification cylinders. PHMSA proposes an amendment to paragraph (c) to require that Transport Canada cylinders be requalified and marked in accordance with the Transport Canada TDG Regulations. This amendment is necessary to ensure that RIN holders utilize the TDG Regulations when requalifying and marking Transport Canada cylinders.

Section 180.207

Section 180.207 prescribes requirements for requalification of UN pressure receptacles. Consistent with changes to the UN Model Regulations, PHMSA proposes to revise paragraph (d)(3) to incorporate ISO 10462:2013 concerning requalification of dissolved acetylene cylinders. This paragraph also includes an authorization to requalify acetylene cylinders in accordance with the current ISO standard until December 31, 2018.

Section 180.413

Section 180.413 provides the requirements for the repair, modification, stretching, rebarrelling, or mounting of specification cargo tanks. Currently, § 180.413(a)(1) requires that each repair of a specification cargo tank must be performed by a repair facility holding a valid National Board Certificate of Authorization for use of the National Board "R" stamp and must be made in accordance with the edition of the National Board Inspection Code in effect at the time the work is performed. "Repair" is defined in § 180.403 as any welding on a cargo tank wall done to return a cargo tank or a cargo tank motor vehicle to its original design and construction specification, or to a condition prescribed for a later equivalent specification in effect at the time of the repair. As discussed in the "Harmonization Proposals in this NPRM" section, stakeholders participating in the U.S.-Canada RCC identified this requirement as being burdensome to United States carriers who also operate in Canada. In accordance with the Transport Canada TDG Regulations, a facility in Canada can perform a repair on a specification cargo tank if it holds either a valid National Board Certificate of Authorization for use of the National Board "R" stamp or a valid Certificate of Authorization from a provincial pressure vessel jurisdiction for repair. The latter authorization becomes problematic for United States carriers requiring the repair of a DOT specification cargo tank while in Canada. Section 180.413 currently only authorizes the repair of a DOT specification cargo tank by a facility holding a valid National Board Certificate of Authorization for use of the National Board "R" stamp. If a DOT specification cargo tank is repaired in Canada at a facility holding a Certificate of Authorization from a provincial pressure vessel jurisdiction for repair and not a National Board Certificate of Authorization for use of the National Board "R" stamp, the DOT specification of the cargo tank is placed in jeopardy.

Based on this input from RCC stakeholders, PHMSA conducted a comparison of the HMR requirements for the repair of specification cargo tanks and the corresponding requirements of the Transport Canada TDG Regulations. PHMSA finds that the requirements for the repair of a specification cargo tank conducted in accordance with the Transport Canada TDG Regulations by a facility in Canada holding a valid Certificate of Authorization from a provincial pressure vessel jurisdiction for repair provides for at least an equivalent level of safety as those provided by the HMR. Further, the Transport Canada TDG Regulations authorize the repair of TC specification cargo tanks by facilities in the U.S. that are registered in accordance with part 107 subpart F.

Accordingly, PHMSA proposes to expand the authorization for the repair of DOT specification cargo tanks by revising § 180.413(a)(1). Specifically, PHMSA proposes to add a new subparagraph (iii) authorizing a repair, as defined in § 180.403, of a DOT specification cargo tank used for the transportation of hazardous materials in the United States performed by a facility in Canada in accordance with the Transport Canada TDG Regulations, provided the facility holds a valid Certificate of Authorization from a provincial pressure vessel jurisdiction for repair; the facility is registered in accordance with the Transport Canada TDG Regulations to repair the corresponding TC specification; and all repairs are performed using the quality control procedures used to obtain the Certificate of Authorization.

PHMSA also proposes an incidental revision to § 180.413(b) to except facilities in Canada that perform a repair in accordance with the proposed § 180.413(a)(1)(iii) from the requirement that each repair of a cargo tank involving welding on the shell or head must be certified by a Registered Inspector. The Transport Canada TDG Regulations provide requirements for the oversight of welding repairs and do not use the term "Registered Inspector."

These proposed provisions would not place any additional financial or reporting burden on U.S. companies. Rather, the enhanced regulatory reciprocity between the United States and Canada as a result of these provisions would provide the companies with additional flexibility and cost savings due to necessary opportunities for obtaining repairs to DOT specification cargo tanks in Canada.

See the review of § 107.502 for the discussion of a related proposal.

Section 180.605

Section 180.605 prescribes requirements for the qualification of portable tanks. Consistent with the UN Model Regulations, PHMSA proposes an amendment to paragraph (g)(1) to require as a part of internal and external examination that the wall thickness must be verified by appropriate measurement if this inspection indicates a reduction of wall thickness. This proposed amendment would require the inspector to verify that the shell thickness is equal to or greater than the minimum shell thickness indicated on the portable tanks metal plate (see § 178.274(i)(1)).

VII. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This proposed rule is published under the statutory authority of Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*). Section 5103(b) of Federal hazmat law authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce. This proposed rule amends regulations to maintain alignment with international standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations and vessel stowage requirements. To this end, the proposed rule amends the HMR to more fully align with the biennial updates of the UN Model Regulations, the IMDG Code, and the ICAO Technical Instructions.

Harmonization serves to facilitate international commerce, while also promoting the safety of people, property, and the environment by reducing the potential for confusion and misunderstanding that could result if shippers and transporters were required to comply with two or more conflicting sets of regulatory requirements. While the intent of this rulemaking is to align the HMR with international standards, we review and consider each amendment based on its own merit, on its overall impact on transportation safety, and on the economic implications associated with its adoption into the HMR. Our goal is to harmonize internationally without sacrificing the current HMR level of safety or imposing undue burdens on the regulated community. Thus, as explained in the corresponding sections above, we are not proposing harmonization with certain specific provisions of the UN Model Regulations, the IMDG Code, and the ICAO Technical Instructions. Moreover, we are maintaining a number of current exceptions for domestic transportation that should minimize the compliance burden on the regulated community. Additionally, the following external agencies were consulted in the development of this rule: Federal Aviation Administration, Federal Motor Carrier Safety Administration, Federal Railroad Administration, U.S. Coast Guard.

Section 49 U.S.C. 5120(b) of Federal hazmat law authorizes the Secretary to ensure that, to the extent practicable, regulations governing the transportation of hazardous materials in commerce are consistent with standards adopted by international authorities. This rule proposes to amend the HMR to maintain alignment with international standards by incorporating various amendments to facilitate the transport of hazardous material in international commerce. To this end, as discussed in detail above, PHMSA proposes to incorporate changes into the HMR based on the 19th Revised Edition of the UN Model Regulations, Amendment 38–16 to the IMDG Code, and the 2017–2018 Edition of the ICAO Technical Instructions, which become effective January 1, 2017. The large volume of hazardous materials transported in international commerce warrants the harmonization of domestic and international requirements to the greatest extent possible.

B. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

This notice is not considered a significant regulatory action under section 3(f) of Executive Order 12866 (''Regulatory Planning and Review'') and, therefore, was not reviewed by the Office of Management and Budget. This notice is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). Additionally, Executive Order 13563 (''Improving Regulation and Regulatory Review'') supplements and reaffirms Executive Order 12866, stressing that, to the extent permitted by law, an agency rulemaking action must be based on benefits that justify its costs, impose the least burden, consider cumulative burdens, maximize benefits, use performance objectives, and assess available alternatives.

Benefits to Harmonization

General Harmonization Benefit: In an earlier regulatory evaluation,[10] PHMSA estimated a proxy for benefits of harmonization of the HMR with international standards of $87.9 million. We estimated this number by multiplying a hazard communication cost per dollar of hazardous materials output ($0.001) by the value of hazardous materials involved in international trade, as estimated by the proportion of trade (the total of gross imports and gross exports) in the fuels and lubricants, chemicals, and medicinal/dental/pharmaceutical products industries ($879 billion in 2013) [11] that are hazardous products (approximately 10 percent).

For estimating benefits of this proposed rule, we follow a nearly identical approach, while acknowledging there is an inherent imprecision of benefits, and update the data and assumptions where possible. Unlike in the last regulatory evaluation, 2012 Commodity Flow Survey (CFS) data on hazardous materials is now available. According to the 2012 CFS, $13,852,143 million worth of commodities were transported in the U.S. in 2012, of which $2,334,425 million worth were hazardous (or 16.9 percent).[12]

However, we acknowledge that the estimated 16.9 percent proportion of total shipment values classed as hazardous materials may have had a high-side bias due to the variety of different classes of products classified as hazardous. The percentage of shipments properly classified as hazardous—particularly for medicinal/dental/pharmaceutical products—is likely lower, which for the purpose of this analysis we assume to be 10 percent.

We update our estimate of value of hazardous materials involved in international trade by using U.S. trade in goods seasonally adjusted, Census-based total gross imports, and gross exports in the fuels and lubricants, chemicals, and medicinal/dental/pharmaceutical products industries for 2015, which is the most recent year available.

- Gross imports: $451.8 billion (rounded).
    - ○ Fuels and lubricants: $198.217 billion.
    - ○ Chemicals: $73.304 billion.
    - ○ Medicinal/dental/pharmaceutical products: $180.280 billion.
- Gross exports: $281.6 billion (rounded).
    - ○ Fuels and lubricants: $115.013 billion.
    - ○ Chemicals: $111.492 billion.
    - ○ Medicinal/dental/pharmaceutical products: $55.046 billion.
- Gross imports plus gross exports: $733.4 billion.[13]

Multiplying this $733.4 billion figure by the estimated proportion of annual trade in these three industries that are hazardous products (10 percent) by the average hazard communication cost per dollar of hazardous materials produced in the United States ($0.001) results in an estimate of benefits from general harmonization of about $73.3 million annually, rounded.

If the HMR are not harmonized with international standards, we estimate that it will cost U.S. companies an additional $73.3 million per year to comply with both the domestic and international standards. Harmonizing the HMR with the international standards, however, will avert these $73.3 million in additional costs, making them the primary benefit attributable to this rulemaking.

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[10] HM–215M: Hazardous Materials: Harmonization with International Standards (RRR), Final Rule, 80 FR 1075, January 8, 2015.

[11] As reported in the quarterly trade data of the U.S. Bureau of Economic Analysis, available at: *http://www.bea.gov/international/detailed_trade_data.htm.*

[12] *http://www.rita.dot.gov/bts/sites/rita.dot.gov.bts/files/publications/commodity_flow_survey/2012/hazardous_materials/index.html.*

[13] Bureau of Economic Analysis, U.S. Department of Commerce, U.S. Trade in Goods (IDS–0008), available at: *http://www.bea.gov/international/detailed_trade_data.htm.*

RCC Initiatives: PHMSA believes that recognition under the HMR of Transport Canada cylinders, equivalency certificates, and cargo tanks would not result in any significant costs but would instead provide benefits in flexibility to cylinder users, shipments of hazardous materials made under an equivalency certificate to the U.S., and certain U.S.-based cargo tank motor vehicle operators requiring repairs while in Canada. We do not believe there is currently a basis for reliably estimating quantitatively the benefits of the cylinder and equivalency certificate provisions of this proposed rule. However, we welcome and specifically solicit data available to commenters to more accurately estimate benefits quantitatively. With regard to all three RCC proposed amendments, PHMSA believes that aligning regulatory approaches between Canada and the United States can spur economic growth and job creation in both nations, facilitate trade, and still maintain appropriate safety standards. Preliminary analysis indicates that the total annual benefit of the cargo tank RCC provisions proposed in this rulemaking would be $6,555,234 per year (for the high estimate of U.S.-made cargo tanks affected), $779,337 per year (for the middle estimate), or $693,804 per year (for the low estimate). Please see the Regulatory Impact Analysis (RIA) for this rulemaking action for a detailed discussion of the benefits of recognizing cargo tank repairs made in Canadian facilities.

Costs of Harmonization

Please see the RIA for this rulemaking—a copy of which has been placed in the docket—for detailed analysis of the costs of various amendments proposed in this NPRM. We provide below a summary of cost estimates for several of the larger cost proposals.

Incorporation by Reference: PHMSA anticipates that the primary cost of updating references incorporated in the HMR to the most recent international hazardous material standards will be the purchase of updated copies to be incorporated by reference. These costs will be borne by offerors, package manufacturers, and transporters of hazardous materials if this rulemaking were finalized.

It is unknown how many individuals and firms involved in shipping hazardous materials will purchase copies of these international standards as a result of finalizing this rulemaking. We take a conservative approach to estimating such a figure by using as a proxy the number of shippers, carriers, or other offerors or transporters of hazardous materials in commerce with a PHMSA registration expiring before 2019. Currently, PHMSA's registration database indicates 38,070 registrants as of March 18, 2016.[14] Of these, 31,103 (approximately 82 percent) are small businesses as defined by the U.S. Small Business Administration. Further, 31,765 registrants (approximately 83 percent) indicated that they offer or transport hazardous materials solely by highway method.

If we assume (for conservative estimation purposes) that all registrants will purchase copies of the ICAO and IMDG publications, this indicates an estimated cost of $19.3 million (rounded, $508.70 cost of ICAO and IMDG publications × 38,070 registrants). However, we further assume that the two publications included in the $19.3 cost (ICAO Technical Instructions (for air) and IMDG Code (by vessel)) will not apply to such registrants who indicated that they offer or transport in commerce hazardous materials only via highway. Therefore, costs for the 31,765 highway-only registrants would be zero. To counterbalance a registrant purchasing more than one copy, we conservatively assume all other registrants—while acknowledging that, in fact, some will purchase both standards copies and some will purchase none—will purchase updated copies of all standards publications listed here, indicating a rounded cost of $3.2 million ($508.70 × 6,305 registrants [38,070 total registrants − 31,765 highway-only registrants]).

All of the ISO standards incorporated will not be purchased by the majority of shippers and carriers and, thus, will likely only impact a small subset of the regulated community. Further, we assume that many companies will purchase multiple copies of the ISO codes, rather than only one copy. Manufacturers of pressure receptacles impacted by the ISO codes are included in the North American Industry Classification System (NAICS) 332420 "Metal Tank (Heavy Gauge) Manufacturing," which includes cylinders, and NAICS 332911 "Industrial Valve Manufacturing," or more generally in NAICS 332, "Fabricated Metal Product Manufacturing." Users of pressure receptacles impacted by the ISO codes are included in NAICS 325120 "Industrial Gas Manufacturing," or more generally in NAICS 325 "Chemical Manufacturing." Testers and requalifiers of pressure receptacles are included in NAICS 541380 "Testing Laboratories," or more generally in NAICS 541 "Professional, Scientific, and Technical Services." The more conservative, all-encompassing three-digit NAICS industries are used to estimate impacted entities, as each entity may purchase more than one copy of a publication. The PHMSA registration database has 834 registrants in NAICS 332; 3,335 registrants in NAICS 325; and 415 registrants in NAICS 541, for a total of 4,584 impacted registrants. It costs each impacted registrant $1,853 to purchase the ISO standards, or $8.5 million total (rounded, 4,584 impacted registrants × $1,853 cost per registrant).

It will cost $3.2 million to purchase the ICAO and IMDG publications and $8.5 million to purchasing the ISO publications, giving a total one-time cost of $11.7 million. We do not believe we have sufficient data to estimate the precise number of registrants. However, we use one copy per impacted registrant as a reasonably conservative estimate on costs of the proposed rulemaking. It should also be noted that several of the companies purchasing the international standards may serve international markets and would have purchased these publications even in the absence of this rulemaking. Therefore, costs due to this proposed rule are likely lower than these estimates.

Lithium Battery Hazard Communication: PHMSA anticipates that incorporating a new battery label in place of the existing label and requiring a new lithium battery label in place of the existing label will be cost neutral. We anticipate that the price of the new label will be similar to the price of existing labels. The proposed amendment provides a phase-in period to December 2018, allowing shippers and carriers of the impacted lithium battery shipments a sufficient transition period to use the new label.

PHMSA anticipates that incorporating a new standard lithium battery mark across all modes will provide consistent hazard communication, reduce training costs, and facilitate intermodal movements. Expanding the scope of packages requiring application of the new lithium battery mark for small shipments of lithium batteries will provide benefits pertaining to better identification of lithium battery shipments, but it will likely involve some amount of increased compliance cost. As with the proposed labeling revisions, PHMSA would provide a phase-in period to December 2018, allowing shippers and carriers of the impacted lithium battery shipments a sufficient transition period to use the new mark.

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[14] See PHMSA Hazardous Materials Registration Program Registration Data Files, link available at: *http://www.phmsa.dot.gov/hazmat/registration*, accessed on March 18, 2016.

PHMSA anticipates that eliminating additional document requirements for shipments of small lithium batteries will likely provide economic benefits and cost savings to shippers.

However, PHMSA anticipates the provision increasing the number of packages containing lithium batteries installed in equipment that have to be marked with the lithium battery mark will increase compliance costs. The proposals in this NPRM would apply the lithium battery mark to an expanded number of lithium batteries installed in equipment (LBIIE) packages. Currently packages that contain "no more than four lithium cells or two lithium batteries installed in equipment" are not subject to marking requirements regardless of how many packages are in a single shipment. In this NPRM, PHMSA proposes to require each package that contains lithium batteries installed in equipment to display the lithium battery marking when there are more than two packages in the consignment.

We assume that U.S. manufacturers of certain equipment containing lithium batteries and wholesalers of LBIIE that supply retailers with consignments containing more than two packages of LBIIE will be most impacted by the proposed provision.[15] We anticipate the provisions of this proposed change to impact U.S.-based manufacturers, wholesalers, and certain retailers of lithium batteries and equipment containing lithium batteries. PHMSA specifically solicits comment on the types and numbers of entities that are to be impacted by this proposed change.

The total domestic manufacturer and wholesaler marking costs as illustrated in the RIA in the docket for this rulemaking approximates the upper bound annual cost of the provision to be about $4.9 million ($838,456 + $7,665 + $4.0 million).[16] We anticipate that the cost will be substantially lower because many domestic manufacturers and shippers may already label their LBIIE packages with a current lithium battery label (regardless if required by the HMR); not all of these shippers would necessarily ship LBIIE with more than two packages per shipment (for which shipments would be excepted from the lithium battery marking requirements of this provision); and transitioning to the new lithium battery mark may have minimal impact.

Net Benefit

Based on the discussions of benefits and costs provided above, PHMSA estimates the net benefit associated with the rulemaking to be $63.2 million–69 million in the first year after publication and $70 million–75.8 million in the second year after publication. Please see the complete RIA for a more detailed analysis of the costs and benefits of this proposed rule.

C. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). It preempts State, local, and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazmat law, 49 U.S.C. 5101–5128, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects, as follows:

(1) The designation, description, and classification of hazardous material;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(3) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(5) The design, manufacture, fabrication, inspection, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.

This proposed rule addresses covered subject items (1), (2), (3), (4), and (5) above and preempts State, local, and Indian tribe requirements not meeting the "substantively the same" standard. This proposed rule is necessary to incorporate changes adopted in international standards, effective January 1, 2017. If the proposed changes are not adopted in the HMR, U.S. companies—including numerous small entities competing in foreign markets—would be at an economic disadvantage because of their need to comply with a dual system of regulations. The changes in this proposed rulemaking are intended to avoid this result. Federal hazmat law provides at 49 U.S.C. 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. PHMSA proposes the effective date of Federal preemption be 90 days from publication of a final rule in this matter.

D. Executive Order 13175

This proposed rule was analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this proposed rule does not have tribal implications, does not impose substantial direct compliance costs, and is required by statute, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities, unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. This proposed rule facilitates the transportation of hazardous materials in international commerce by providing consistency with international standards. It applies to offerors and carriers of hazardous materials, some of whom are small entities, such as chemical manufacturers, users and suppliers, packaging manufacturers, distributors, and training companies. As previously discussed under "Executive Order 12866," the majority of amendments in this proposed rule should result in cost savings and ease the regulatory compliance burden for shippers engaged in domestic and international commerce, including trans-border shipments within North America.

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[15] We assume that most retailers selling to end users are likely not impacted, as we assume that they primarily ship single units of LBIIE for the majority of their consignments, which would not require marking due to the two or few packages per consignment exception. However, we solicit comment on whether this assumption is appropriate and welcome data confirming or refuting this assumption.

[16] Because of the 2-year transition period, these costs would not be encountered until the third year after finalizing the rule.

Many companies will realize economic benefits as a result of these amendments. Additionally, the changes effected by this NPRM will relieve U.S. companies, including small entities competing in foreign markets, from the burden of complying with a dual system of regulations. Therefore, we certify that these amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities.

This proposed rule has been developed in accordance with Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

F. Paperwork Reduction Act

PHMSA currently has approved information collections under Office of Management and Budget (OMB) Control Number 2137–0557, "Approvals for Hazardous Materials," and OMB Control Number 2137–0034, "Hazardous Materials Shipping Papers & Emergency Response Information." We anticipate that this proposed rule will result in an increase in the annual burden for OMB Control Number 2137–0034 due to an increase in the number of applications for modifications to existing holders of DOT-issued RINs. In this NPRM, PHMSA proposes to amend § 107.805(f)(2) to allow RIN holders to submit an application containing all the required information prescribed in § 107.705(a); identifying the TC, CTC, CRC, or BTC specification cylinder(s) or tube(s) to be inspected; certifying the requalifier will operate in compliance with the applicable TDG Regulations; and certifying the persons performing requalification have been trained and have the information contained in the TDG Regulations. This application would be in addition to any existing application and burden encountered during the initial RIN application.

We anticipate this proposed rule will result in a decrease in the annual burden and costs of OMB Control Number 2137–0034. This burden and cost decrease is primarily attributable to the proposed removal of the alternative document currently required for lithium cells or batteries offered in accordance with § 173.185(c). Additional increased burdens and costs to OMB Control Number 2137–0034 in this proposed rule are attributable to a new proposed indication on shipping papers that a shipment of prototype or low production run lithium batteries or cells is in accordance with § 173.185(e)(7) and the proposed addition of new marine pollutant entries.

This rulemaking identifies revised information collection requests that PHMSA will submit to OMB for approval based on the requirements in this NPRM. PHMSA has developed burden estimates to reflect changes in this NPRM and estimates the information collection and recordkeeping burdens in this rule are as follows:

OMB Control Number 2137–0557

Annual Increase in Number of Respondents: 3,600.
Annual Increase in Annual Number of Responses: 3,600.
Annual Increase in Annual Burden Hours: 1,800.
Annual Increase in Annual Burden Costs: $63,000.

OMB Control Number 2137–0034

Annual Decrease in Number of Respondents: 972,551.
Annual Decrease in Annual Number of Responses: 9,765,507.
Annual Decrease in Annual Burden Hours: 27,161.
Annual Decrease in Annual Burden Costs: $950,635.

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. Section 1320.8(d) of 5 CFR requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information and recordkeeping requests. PHMSA specifically solicits comment on the information collection and recordkeeping burdens associated with developing, implementing, and maintaining these proposed requirements. Address written comments to the Dockets Unit as identified in the **ADDRESSES** section of this rulemaking. We must receive comments regarding information collection burdens prior to the close of the comment period as identified in the **DATES** section of this rulemaking. In addition, you may submit comments specifically related to the information collection burden to the PHMSA Desk Officer, Office of Management and Budget, at fax number 202–395–6974. Requests for a copy of this information collection should be directed to Steven Andrews or T. Glenn Foster, Standards and Rulemaking Division (PHH–10), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. If these proposed requirements are adopted in a final rule, PHMSA will submit the revised information collection and recordkeeping requirements to OMB for approval.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act of 1995

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141.3 million or more, adjusted for inflation, to either State, local, or tribal governments, in the aggregate, or to the private sector in any one year, and is the least burdensome alternative that achieves the objective of the rule.

I. Environmental Assessment

The National Environmental Policy Act of 1969, 42 U.S.C. 4321–4375, requires that Federal agencies analyze proposed actions to determine whether the action will have a significant impact on the human environment. The Council on Environmental Quality (CEQ) regulations that implement NEPA (40 CFR parts 1500 through 1508) require Federal agencies to conduct an environmental review considering (1) the need for the proposed action, (2) alternatives to the proposed action, (3) probable environmental impacts of the proposed action and alternatives, and (4) the agencies and persons consulted during the consideration process.

1. Purpose and Need

This NPRM would amend the Hazardous Materials Regulations (HMR; 49 CFR parts 171 through 180) to maintain consistency with international standards by incorporating the 19th Revised Edition of the UN Recommendations on the Transport of Dangerous Goods—Model Regulations, Amendment 38–16 to the IMDG Code, the 2017–2018 ICAO Technical Instructions, and Canada's newest amendments to TDG Regulations.

This action is necessary to incorporate changes adopted in the IMDG Code, the ICAO Technical Instructions, and the UN Model Regulations, effective January 1, 2017. If the changes in this proposed rule are not adopted in the HMR by this effective date, U.S. companies—including numerous small entities competing in foreign markets—would be at an economic disadvantage because of their need to comply with a dual system of regulations. The changes in this proposed rulemaking are intended to avoid this result.

The intended effect of this action is to harmonize the HMR with international transport standards and requirements to the extent practicable in accordance with Federal hazmat law (see 49 U.S.C. 5120). When considering the adoption of international standards under the HMR, PHMSA reviews and evaluates each amendment on its own merit, on its overall impact on transportation safety, and on the economic implications associated with its adoption. Our goal is to harmonize internationally without diminishing the level of safety currently provided by the HMR or imposing undue burdens on the regulated public. PHMSA has provided a brief summary of each revision, the justification for the revision, and a preliminary estimate of economic impact.

2. Alternatives

In proposing this rulemaking, PHMSA is considering the following alternatives:

No Action Alternative

If PHMSA were to select the No Action Alternative, current regulations would remain in place and no new provisions would be added. However, efficiencies gained through harmonization in updates to transport standards, lists of regulated substances, definitions, packagings, stowage requirements/codes, flexibilities allowed, enhanced markings, segregation requirements, etc., would not be realized. Foregone efficiencies in the No Action Alternative include freeing up limited resources to concentrate on vessel transport hazard communication (hazcom) issues of potentially much greater environmental impact. Adopting the No Action Alternative would result in a lost opportunity for reducing environmental and safety-related incidents.

Greenhouse gas emissions would remain the same under the No Action Alternative.

Preferred Alternative

This alternative is the current proposal as it appears in this NPRM, applying to transport of hazardous materials by various transport modes (highway, rail, vessel, and aircraft). The proposed amendments included in this alternative are more fully addressed in the preamble and regulatory text sections of this NPRM. However, they generally include:

(1) Updates to references to various international hazardous materials transport standards;

(2) Amendments to the Hazardous Materials Table to include four new Division 4.1 entries for polymerizing substances and to add into the HMR defining criteria, authorized packagings, and safety requirements;

(3) Amendments to add, revise, or remove certain proper shipping names, packing groups, special provisions, packaging authorizations, bulk packaging requirements, and vessel stowage requirements;

(4) Changes to add the following substances to the list of marine pollutants in appendix B to § 172.101: Hexanes; Hypochlorite solutions; Isoprene, stabilized; N-Methylaniline; Methylcyclohexane; and Tripropylene;

(5) Changes throughout the part 173 packaging requirements to authorize more flexibility when choosing packages for hazardous materials;

(6) Various amendments to packaging requirements for the vessel transportation of water-reactive substances;

(7) Revisions to hazard communication requirements for shipments of lithium batteries consistent with changes adopted in the 19th Revised Edition of the UN Model Regulations; and

(8) Amendments to the HMR resulting from coordination with Canada under the U.S.-Canada Regulatory Cooperation Council (RCC).

3. Probable Environmental Impact of the Alternatives

No Action Alternative

If PHMSA were to select the No Action Alternative, current regulations would remain in place and no new provisions would be added. However, efficiencies gained through harmonization in updates to transport standards, lists of regulated substances, definitions, packagings, stowage requirements/codes, flexibilities allowed, enhanced markings, segregation requirements, etc., would not be realized. Foregone efficiencies in the No Action Alternative include freeing up limited resources to concentrate on vessel transport hazcom issues of potentially much greater environmental impact.

Additionally, the Preferred Alternative encompasses enhanced and clarified regulatory requirements, which would result in increased compliance and a decreased number of environmental and safety incidents. Not adopting the proposed environmental and safety requirements in the NPRM under the No Action Alternative would result in a lost opportunity for reducing environmental and safety-related incidents.

Greenhouse gas emissions would remain the same under the No Action Alternative.

Preferred Alternative

If PHMSA selects the provisions as proposed in this NPRM, safety and environmental risks would be reduced and that protections to human health and environmental resources would be increased. Potential environmental impacts of each proposed amendment in the preferred alternative are discussed as follows:

1. *Incorporation by Reference:* PHMSA proposes to update references to various international hazardous materials transport standards including the 2017–2018 ICAO Technical Instructions; Amendment 38–16 to the IMDG Code; the 19th Revised Edition of the UN Model Regulations; the 6th Revised Edition of the UN Manual of Tests and Criteria; and the latest amendments to the Canadian TDG Regulations. Additionally, we propose to add one new reference to standards and update eight other references to standards applicable to the manufacture use and requalification of pressure vessels published by the International Organization for Standardization.

This proposed amendment, which will increase standardization and consistency of regulations, will result in greater protection of human health and the environment. Consistency between U.S. and international regulations enhances the safety and environmental protection of international hazardous materials transportation through better understanding of the regulations, an increased level of industry compliance, the smooth flow of hazardous materials from their points of origin to their points of destination, and consistent emergency response in the event of a hazardous materials incident. The HMR authorize shipments prepared in accordance with the ICAO Technical Instructions and by motor vehicle either before or after being transported by aircraft. Similarly, the HMR authorize shipments prepared in accordance with the IMDG Code if all or part of the transportation is by vessel. The authorizations to use the ICAO Technical Instructions and the IMDG Code are subject to certain conditions and limitations outlined in part 171 subpart C.

Harmonization will result in more targeted and effective training and thereby enhanced environmental protection. This proposed amendment will eliminate inconsistent hazardous materials regulations, which hamper compliance training efforts. For ease of compliance with appropriate regulations, air and vessel carriers engaged in the transportation of hazardous materials generally elect to comply with the ICAO Technical Instructions and IMDG Code as appropriate. Consistency between these international regulations and the HMR allows shippers and carriers to train their hazmat employees in a single set of requirements for classification, packaging, hazard communication, handling, stowage, etc., thereby minimizing the possibility of improperly preparing and transporting a shipment of hazardous materials because of differences between domestic and international regulations.

Greenhouse gas emissions would remain the same under this proposed amendment.

2. *Consistent with amendments adopted into the UN Model Regulations, PHMSA proposes to revise the Hazardous Materials Table in § 172.101 to include four new Division 4.1 entries for polymerizing substances. Additionally, we propose to add into the HMR defining criteria, authorized packagings, and safety requirements including, but not limited to, stabilization methods and operational controls.*

This proposed amendment, which will increase standardization and consistency of regulations, will result in greater protection of human health and the environment. Consistency between U.S. and international regulations enhances the safety and environmental protection of international hazardous materials transportation through better understanding of the regulations, an increased level of industry compliance, the smooth flow of hazardous materials from their points of origin to their points of destination, and consistent emergency response in the event of a hazardous materials incident. New and revised entries to the HMT reflect emerging technologies and a need to better describe or differentiate between existing entries. These proposed changes mirror changes in the Dangerous Goods List of the 19th Revised Edition of the UN Model Regulations, the 2017–2018 ICAO Technical Instructions, and the Amendment 38–16 to the IMDG Code. It is extremely important for the domestic HMR to mirror these international standards regarding the entries in the HMT to allow for consistent naming conventions across modes and international borders.

Harmonization will result in more targeted and effective training and thereby enhanced environmental protection. This proposed amendment will eliminate inconsistent hazardous materials regulations, which hamper compliance training efforts. For ease of compliance with appropriate regulations, international carriers engaged in the transportation of hazardous materials by vessel generally elect to comply with the IMDG Code. Consistency between these international regulations and the HMR allows shippers and carriers to train their hazmat employees in a single set of requirements for classification, packaging, hazard communication, handling, stowage, etc., thereby minimizing the possibility of improperly preparing and transporting a shipment of hazardous materials because of differences between domestic and international regulations.

Inclusion of entries in the HMT reflects a degree of danger associated with a particular material and identifies appropriate packaging. This proposed change provides a level of consistency for all articles specifically listed in the HMT, without diminishing environmental protection and safety.

Greenhouse gas emissions would remain the same under this proposed amendment.

3. *PHMSA proposes amendments to the HMT to add, revise, or remove certain proper shipping names, packing groups, special provisions, packaging authorizations, bulk packaging requirements, and vessel stowage requirements. Amendments to HMT proper shipping names include: Assigning the existing "Engines, internal combustion" entries to their own new UN numbers and provisions; amending existing "Uranium Hexafluoride" entries to include a new Division 6.1 subsidiary hazard class designation; adding a new entry for "Polyester resin kit, solid base material; and adding a Division 1.4C new entry for "Rocket motors." Additionally, we also propose to add and revise special provisions, large packaging authorizations, and intermediate bulk container (IBC) authorizations consistent with the UN Model Regulations to provide a wider range of packaging options to shippers of hazardous materials.*

This proposed amendment, which will increase standardization and consistency of regulations, will result in greater protection of human health and the environment. Consistency between U.S. and international regulations enhances the safety and environmental protection of international hazardous materials transportation through better understanding of the regulations, an increased level of industry compliance, the smooth flow of hazardous materials from their points of origin to their points of destination, and consistent emergency response in the event of a hazardous materials incident. New and revised entries to the HMT reflect emerging technologies and a need to better describe or differentiate between existing entries. These proposed changes mirror changes in the Dangerous Goods List of the 19th Revised Edition of the UN Model Regulations, the 2017–2018 ICAO Technical Instructions, and the Amendment 38–16 to the IMDG Code. It is extremely important for the domestic HMR to mirror these international standards regarding the entries in the HMT to allow for consistent naming conventions across modes and international borders.

Harmonization will result in more targeted and effective training and thereby enhanced environmental protection. This proposed amendment will eliminate inconsistent hazardous materials regulations, which hamper compliance training efforts. For ease of compliance with appropriate regulations, international carriers engaged in the transportation of hazardous materials by vessel generally elect to comply with the IMDG Code. Consistency between these international regulations and the HMR allows shippers and carriers to train their hazmat employees in a single set of requirements for classification, packaging, hazard communication, handling, stowage, etc., thereby minimizing the possibility of improperly preparing and transporting a shipment of hazardous materials because of differences between domestic and international regulations.

Inclusion of entries in the HMT reflects a degree of danger associated with a particular material and identifies appropriate packaging. This proposed change provides a level of consistency for all articles specifically listed in the HMT, without diminishing environmental protection and safety.

Greenhouse gas emissions would remain the same under this proposed amendment.

4. *PHMSA proposes to add the following substances to the list of marine pollutants in appendix B to § 172.101: Hexanes; Hypochlorite solutions; Isoprene, stabilized; N-Methylaniline; Methylcyclohexane; and Tripropylene.*

This proposed amendment, which will increase standardization and consistency of regulations, will result in greater protection of human health and the environment. Consistency between U.S. and international regulations enhances the safety and environmental protection of international hazardous materials transportation through better understanding of the regulations, an increased level of industry compliance, the smooth flow of hazardous materials from their points of origin to their points of destination, and consistent emergency response in the event of a hazardous materials incident. These proposed additions and deletions are based on the criteria contained in the IMDG Code for substances classified as toxic to the aquatic environment. The HMR maintain a list as the basis for regulating substances toxic to the aquatic environment and allow use of the criteria in the IMDG Code if a listed material does not meet the criteria for a marine pollutant. PHMSA periodically updates its list based on changes to the IMDG Code and evaluation of listed materials against the IMDG Code criteria. Amending the marine pollutant list will facilitate consistent communication of the presence of marine pollutants and facilitate safe and efficient transportation without imposing significant burden associated with characterizing mixtures as marine pollutants.

Greenhouse gas emissions would remain the same under this proposed amendment.

5. *Consistent with amendments adopted into the UN Model Regulations, PHMSA proposes to adopt changes throughout the part 173 packaging requirements to authorize more flexibility when choosing packages for hazardous materials. These changes include design, construction, and performance testing criteria of composite reinforced tubes between 450 L and 3,000 L water capacity.*

These proposed amendments permit additional flexibility for authorized packages without compromising environmental protection or safety. Manufacturing and performance standards for gas pressure receptacles strengthen the packaging without being overly prescriptive. Increased flexibility will also add to environmental protection by increasing the ease of regulatory compliance.

Harmonization will result in more targeted and effective training and thereby enhanced environmental protection. This proposed amendment will eliminate inconsistent hazardous materials regulations, which hamper compliance training efforts. Consistency between these international regulations and the HMR allows shippers and carriers to train their hazmat employees in a single set of requirements for classification, packaging, hazard communication, handling, stowage, etc., thereby minimizing the possibility of improperly preparing and transporting a shipment of hazardous materials because of differences between domestic and international regulations.

Greenhouse gas emissions would remain the same under this proposed amendment.

6. *PHMSA proposes various amendments to packaging requirements for the vessel transportation of water-reactive substances. The amendments include changes to the packaging requirements to require certain commodities to have hermetically sealed packaging and to require other commodities—when packed in flexible, fiberboard, or wooden packagings—to have sift-proof and water-resistant packaging or packaging fitted with a sift-proof and water-resistant liner.*

The proposed amendment will reduce the risk of fire on board cargo vessels carrying hazardous materials that can react dangerously with the ship's available water and carbon dioxide fire extinguishing systems. PHMSA proposes to amend the packaging requirements for vessel transportation of hazardous materials that react with water or moisture to generate excessive heat or release toxic or flammable gases. Common causes for water entering into the container are: Water entering through ventilation or structural flaws in the container; water entering into the containers placed on deck or in the hold in heavy seas; and water entering into the cargo space upon a ship collision or leak. If water has already entered the container, the packaging is the only protection from the fire. In this NPRM, PHMSA proposes to strengthen the ability of these packages transporting water-reactive substances. This proposed amendment will allow for a net increase in environmental protection and safety by keeping reactive substances in their packages, thus preventing release and damage to human health and the natural environment.

Harmonization will result in more targeted and effective training and thereby enhanced environmental protection. This proposed amendment will eliminate inconsistent hazardous materials regulations, which hamper compliance training efforts. For ease of compliance with appropriate regulations, international carriers engaged in the transportation of hazardous materials by vessel generally elect to comply with the IMDG Code. Consistency between these international regulations and the HMR allows shippers and carriers to train their hazmat employees in a single set of requirements for classification, packaging, hazard communication, handling, stowage, etc., thereby minimizing the possibility of improperly preparing and transporting a shipment of hazardous materials because of differences between domestic and international regulations.

Greenhouse gas emissions would remain the same under this proposed amendment.

7. *PHMSA proposes to revise hazard communication requirements for shipments of lithium batteries. Specifically, PHMSA proposes to adopt a new lithium battery label in place of the existing Class 9 label; to amend the existing marking requirements for small lithium battery shipments in § 173.185(c) to incorporate a new standard lithium battery mark for use across all modes; to delete the documentation requirement in § 173.185(c) for shipments of small lithium cells and batteries; and to amend the exception for small lithium cells and batteries requiring the lithium battery mark from the current applicability of "no more than four lithium cells or two lithium batteries installed in the equipment" to "no more than four lithium cells or two lithium batteries installed in equipment, where there are not more than two packages in the consignment."*

This proposed amendment, which will provide for enhanced hazard communication, will result in greater protection of human health and the environment by increasing awareness and preparedness.

Greenhouse gas emissions would remain the same under this proposed amendment.

8. *PHMSA proposes several amendments to the HMR resulting from coordination with Canada under the U.S.-Canada Regulatory Cooperation Council (RCC). We are proposing provisions for recognition of Transport Canada (TC) cylinders, equivalency certificates, and inspection and repair of cargo tanks.*

This proposed amendment, which will increase standardization and consistency of regulations, will result in greater protection of human health and the environment. Consistency between U.S. and international regulations enhances the safety and environmental protection of international hazardous materials transportation through better understanding of the regulations, an increased level of industry compliance, the smooth flow of hazardous materials from their points of origin to their points of destination, and consistent emergency response in the event of a hazardous materials incident. The proposed additions intend to provide reciprocal treatment of DOT Special Permits and TC equivalency certificates, DOT cylinders and TC cylinders, and cargo tank repair capabilities in both countries. Amending the HMR will facilitate consistent communication for substances transported by cylinders and cargo tanks, thus decreasing not only incident response time, but the number and severity of environmental and safety incidents.

The proposed action is consistent with concurrent actions by Transport Canada to amend the TDG Regulations.

Greenhouse gas emissions would remain the same under this proposed amendment.

4. Agencies Consulted

This NPRM represents PHMSA's first action in the U.S. for this program area. PHMSA has coordinated with the U.S. Federal Aviation Administration, the Federal Motor Carrier Safety Administration, the Federal Railroad Administration, and the U.S. Coast Guard, in the development of this proposed rule. PHMSA will consider the views expressed in comments to the NPRM submitted by members of the public, state and local governments, and industry.

5. Conclusion

The provisions of this proposed rule build on current regulatory requirements to enhance the transportation safety and security of shipments of hazardous materials transported by highway, rail, aircraft, and vessel, thereby reducing the risks of an accidental or intentional release of hazardous materials and consequent environmental damage. PHMSA concludes that the net environmental impact will be positive and that there are no significant environmental impacts associated with this proposed rule.

PHMSA welcomes any views, data, or information related to environmental impacts that may result if the proposed requirements are adopted, as well as possible alternatives and their environmental impacts.

J. Privacy Act

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://www.dot.gov/privacy.html.*

K. Executive Order 13609 and International Trade Analysis

Under Executive Order 13609 (“Promoting International Regulatory Cooperation”), agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, the Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

PHMSA participates in the establishment of international standards to protect the safety of the American public. PHMSA has assessed the effects of the proposed rule and determined that it does not cause unnecessary obstacles to foreign trade. In fact, the rule is designed to facilitate international trade. Accordingly, this rulemaking is consistent with Executive Order 13609 and PHMSA's obligations under the Trade Agreement Act, as amended.

L. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) directs Federal agencies to use voluntary consensus standards in their regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specification of materials, test methods, or performance requirements) that are developed or adopted by voluntary consensus standard bodies. This NPRM involves multiple voluntary consensus standards which are discussed at length in the “Section-by-Section Review” for § 171.7.

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Maritime carriers, Hazardous materials transportation, Incorporation by reference, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Incorporation by reference, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, PHMSA proposes to amend 49 CFR chapter I as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

■ 1. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4 (28 U.S.C. 2461note); Pub. L. 104–121 sections 212–213; Pub. L. 104–134 section 31001; Pub. L. 112–141 section 33006, 33010; 49 CFR 1.81 and 1.97.

■ 2. In § 107.502, paragraph (b) is revised to read as follows:

§ 107.502 General registration requirements.

* * * * *

(b) No person may engage in the manufacture, assembly, certification, inspection or repair of a cargo tank or cargo tank motor vehicle manufactured under the terms of a DOT specification under subchapter C of this chapter or a special permit issued under this part unless the person is registered with the Department in accordance with the provisions of this subpart. A person employed as an inspector or design certifying engineer is considered to be registered if the person's employer is registered. The requirements of this paragraph do not apply to a person engaged in the repair of a DOT specification cargo tank used in the transportation of hazardous materials in the United States in accordance with § 180.413(a)(1)(iii) of this chapter.

* * * * *

■ 3. In § 107.801, paragraph (a)(2) is revised to read as follows:

§ 107.801 Purpose and scope.

(a) * * *

(2) A person who seeks approval to engage in the requalification (*e.g.* inspection, testing, or certification), rebuilding, or repair of a cylinder manufactured in accordance with a DOT specification or a pressure receptacle in accordance with a UN standard under subchapter C of this chapter or under the terms of a special permit issued under this part, or a cylinder or tube manufactured in accordance with a TC, CTC, CRC, or BTC specification under the Transport Canada TDG Regulations (IBR; see § 171.7);

* * * * *

■ 4. In § 107.805, paragraphs (a), (c)(2), (d), and (f) are revised to read as follows:

§ 107.805 Approval of cylinder and pressure receptacle requalifiers.

(a) *General.* A person must meet the requirements of this section to be approved to inspect, test, certify, repair, or rebuild a cylinder in accordance with a DOT specification or a UN pressure receptacle under subpart C of part 178 or subpart C of part 180 of this chapter, or under the terms of a special permit issued under this part, or a TC, CTC, CRC, or BTC specification cylinder or tube manufactured in accordance with the TDG Regulations (IBR, see § 171.7 of this subchapter).

* * * * *

(c) * * *

(2) The types of DOT specification or special permit cylinders, UN pressure receptacles, or TC, CTC, CRC, or BTC specification cylinders or tubes that will be inspected, tested, repaired, or rebuilt at the facility;

* * * * *

(d) *Issuance of requalifier identification number (RIN).* The Associate Administrator issues a RIN as evidence of approval to requalify DOT specification or special permit cylinders, or TC, CTC, CRC, or BTC specification cylinders or tubes, or UN pressure receptacles if it is determined, based on the applicant's submission and other available information, that the applicant's qualifications and, when applicable, facility are adequate to perform the requested functions in accordance with the criteria prescribed in subpart C of part 180 of this subchapter or TDG Regulations, as applicable.

* * * * *

(f) *Exceptions.* The requirements in paragraphs (b) and (c) of this section do not apply to:

(1) A person who only performs inspections in accordance with § 180.209(g) of this chapter provided the application contains the following, in addition to the information prescribed in § 107.705(a): Identifies the DOT specification/special permit cylinders to be inspected; certifies the requalifier will operate in compliance with the applicable requirements of subchapter C of this chapter; certifies the persons performing inspections have been trained and have the information contained in each applicable CGA pamphlet incorporated by reference in § 171.7 of this chapter applicable to the requalifiers' activities; and includes the signature of the person making the certification and the date on which it was signed. Each person must comply with the applicable requirements in this subpart. In addition, the procedural requirements in subpart H of this part apply to the filing, processing and termination of an approval issued under this subpart; or

(2) A person holding a DOT-issued RIN to perform the requalification (inspect, test, certify), repair, or rebuild of DOT specification cylinders, that wishes to perform any of these actions on corresponding TC, CTC, CRC, or BTC cylinders or tubes may submit an application that, in addition to the information prescribed in § 107.705(a): Identifies the TC, CTC, CRC, or BTC specification cylinder(s) or tube(s) to be inspected; certifies the requalifier will operate in compliance with the applicable TDG Regulations; certifies the persons performing requalification have been trained in the functions applicable to the requalifiers' activities; and includes the signature of the person making the certification and the date on which it was signed. In addition, the procedural requirements in subpart H of this part apply to the filing, processing and termination of an approval issued under this subpart.

(3) A person holding a certificate of registration issued by Transport Canada in accordance with the TDG Regulations to perform the requalification (inspect, test, certify), repair, or rebuild of a TC, CTC, CRC, or BTC cylinder who performs any of these actions on corresponding DOT specification cylinders.

* * * * *

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 5. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–134, section 31001; 49 CFR 1.81 and 1.97.

■ 6. In § 171.2, paragraph (h)(1) is revised to read as follows:

§ 171.2 General requirements.

(h) * * *

(1) Specification identifications that include the letters "ICC", "DOT", "TC", "CTC", "CRC", "BTC", "MC", or "UN";

* * * * *

■ 7. In § 171.7,

■ a. Revise paragraphs (t) introductory text, (t)(1), (v) introductory text, (v)(2), and (w)(1) through (58);

■ b. Add paragraphs (w)(59) through (69);

■ c. Revise paragraphs (bb) introductory text and (bb)(1) introductory text;

■ d. Add paragraphs (bb)(1)(xiii) through (xix);

■ e. Revise paragraphs (dd) introductory text and (dd)(1) and (2); and

■ f. Add paragraph (dd)(3).

The revisions and additions read as follows:

§ 171.7 Reference material.

* * * * *

(t) *International Civil Aviation Organization ("ICAO"),* 999 Robert-Bourassa Boulevard, Montréal, Quebec H3C 5H7, Canada, 1–514–954–8219, *http://www.icao.int.* ICAO Technical Instructions available from: ICAO Document Sales Unit, *sales@icao.int.*

(1) Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), 2017–2018 Edition, into §§ 171.8; 171.22; 171.23; 171.24; 172.101; 172.202; 172.401; 172.512; 172.519; 172.602; 173.56; 173.320; 175.10, 175.33; 178.3.

* * * * *

(v) *International Maritime Organization ("IMO"),* 4 Albert Embankment, London, SE1 7SR, United Kingdom, + 44 (0) 20 7735 7611, *http://www.imo.org.* IMDG Code available from: IMO Publishing, *sales@imo.org.*

(1) * * *

(2) International Maritime Dangerous Goods Code (IMDG Code), Incorporating Amendment 38–16 (English Edition), 2016 Edition, into §§ 171.22; 171.23; 171.25; 172.101; 172.202; 172.203 172.401; 172.502; 172.519; 172.602; 173.21; 173.56; 176.2; 176.5; 176.11; 176.27; 176.30; 176.83; 176.84; 176.140; 176.720; 178.3; 178.274.

(w) * * *

(1) ISO 535–1991(E) Paper and board—Determination of water absorptiveness—Cobb method, 1991, into §§ 178.516; 178.707; 178.708.

(2) ISO 1496–1: 1990 (E)—Series 1 freight containers—Specification and testing, Part 1: General cargo containers. Fifth Edition, (August 15, 1990), into § 173.411.

(3) ISO 1496–3(E)—Series 1 freight containers—Specification and testing—Part 3: Tank containers for liquids, gases and pressurized dry bulk, Fourth edition, March 1995, into §§ 178.74; 178.75; 178.274.

(4) ISO 1516:2002(E), Determination of flash/no flash—Closed cup equilibrium method, Third Edition, 2002–03–01, into § 173.120.

(5) ISO 1523:2002(E), Determination of flash point—Closed cup equilibrium method, Third Edition, 2002–03–01, into § 173.120.

(6) ISO 2431–1984(E) Standard Cup Method, 1984, into § 173.121.

(7) ISO 2592:2000(E), Determination of flash and fire points—Cleveland open cup method, Second Edition, 2000–09–15, into § 173.120.

(8) ISO 2719:2002(E), Determination of flash point—Pensky-Martens closed cup method, Third Edition, 2002–11–15, into § 173.120.

(9) ISO 2919:1999(E), Radiation Protection—Sealed radioactive sources—General requirements and classification, (ISO 2919), second edition, February 15, 1999, into § 173.469.

(10) ISO 3036–1975(E) Board—Determination of puncture resistance, 1975, into § 178.708.

(11) ISO 3405:2000(E), Petroleum products—Determination of distillation characteristics at atmospheric pressure, Third Edition, 2000–03–01, into § 173.121.

(12) ISO 3574–1986(E) Cold-reduced carbon steel sheet of commercial and drawing qualities, into § 178.503; part 178, appendix C.

(13) ISO 3679:2004(E), Determination of flash point—Rapid equilibrium closed cup method, Third Edition, 2004–04–01, into § 173.120.

(14) ISO 3680:2004(E), Determination of flash/no flash—Rapid equilibrium closed cup method, Fourth Edition, 2004–04–01, into § 173.120.

(15) ISO 3807–2(E), Cylinders for acetylene—Basic requirements—Part 2: Cylinders with fusible plugs, First edition, March 2000, into §§ 173.303; 178.71.

(16) ISO 3807:2013: Gas cylinders—Acetylene cylinders—Basic requirements and type testing, Second edition, 2013–08–19, into §§ 173.303; 178.71.

(17) ISO 3924:1999(E), Petroleum products—Determination of boiling range distribution—Gas chromatography method, Second Edition, 1999–08–01, into § 173.121.

(18) ISO 4126–1:2004(E): Safety devices for protection against excessive pressure—Part 1: Safety valves, Second edition 2004–02–15, into § 178.274.

(19) ISO 4126–7:2004(E): Safety devices for protection against excessive pressure—Part 7: Common data, First Edition 2004–02–15 into § 178.274.

(20) ISO 4126–7:2004/Cor.1:2006(E): Safety devices for protection against excessive pressure—Part 7: Common data, Technical Corrigendum 1, 2006–11–01, into § 178.274.

(21) ISO 4626:1980(E), Volatile organic liquids—Determination of boiling range of organic solvents used as raw materials, First Edition, 1980–03–01, into § 173.121.

(22) ISO 4706:2008(E), Gas cylinders—Refillable welded steel cylinders—Test pressure 60 bar and below, First Edition, 2008–04–15, Corrected Version, 2008–07–01, into § 178.71.

(23) ISO 6406(E), Gas cylinders—Seamless steel gas cylinders—Periodic inspection and testing, Second edition, February 2005, into § 180.207.

(24) ISO 6892 Metallic materials—Tensile testing, July 15, 1984, First Edition, into § 178.274.

(25) ISO 7225(E), Gas cylinders—Precautionary labels, Second Edition, July 2005, into § 178.71.

(26) ISO 7866(E), Gas cylinders—Refillable seamless aluminum alloy gas cylinders—Design, construction and testing, First edition, June 1999, into § 178.71.

(27) ISO 7866:2012 Gas cylinders—Refillable seamless aluminium alloy gas cylinders—Design, construction and testing, Second edition, 2012–08–21, into § 178.71.

(28) ISO 7866:2012/Cor 1:2014 Gas cylinders—Refillable seamless aluminium alloy gas cylinders—Design, construction and testing, Technical Corrigendum 1, 2014–04–15, into § 178.71.

(29) ISO 8115 Cotton bales—Dimensions and density, 1986 Edition, into § 172.102.

(30) ISO 9809–1:1999(E): Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 1: Quenched and tempered steel cylinders with tensile strength less than 1100 MPa., First edition, June 1999, into §§ 178.37; 178.71; 178.75.

(31) ISO 9809–1:2010(E): Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 1: Quenched and tempered steel cylinders with tensile strength less than 1 100 MPa., Second edition, 2010–04–15, into §§ 178.37; 178.71; 178.75.

(32) ISO 9809–2:2000(E): Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 2: Quenched and tempered steel cylinders with tensile strength greater than or equal to 1 100 MPa., First edition, June 2000, into §§ 178.71; 178.75.

(33) ISO 9809–2:2010(E): Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 2: Quenched and tempered steel cylinders with tensile strength greater than or equal to 1100 MPa., Second edition, 2010–04–15, into §§ 178.71; 178.75.

(34) ISO 9809–3:2000(E): Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 3: Normalized steel cylinders, First edition, December 2000, into §§ 178.71; 178.75.

(35) ISO 9809–3:2010(E): Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 3: Normalized steel cylinders, Second edition, 2010–04–15, into §§ 178.71; 178.75.

(36) ISO 9809–4:2014 Gas cylinders—Refillable seamless steel gas cylinders—

Design, construction and testing—Part 4: Stainless steel cylinders with an Rm value of less than 1 100 MPa, First edition, 2014–07–08, into §§ 178.71; 178.75.

(37) ISO 9978:1992(E)—Radiation protection—Sealed radioactive sources—Leakage test methods. First Edition, (February 15, 1992), into § 173.469.

(38) ISO 10156:2010(E): Gases and gas mixtures—Determination of fire potential and oxidizing ability for the selection of cylinder valve outlets, Third edition, 2010–04–01, into § 173.115.

(39) ISO 10156:2010/Cor.1:2010(E): Gases and gas mixtures—Determination of fire potential and oxidizing ability for the selection of cylinder valve outlets, Technical Corrigendum 1, 2010–09–01, into § 173.115.

(40) ISO 10297:1999(E), Gas cylinders—Refillable gas cylinder valves—Specification and type testing, First Edition, 1995–05–01, into §§ 173.301b; 178.71.

(41) ISO 10297:2006(E), Transportable gas cylinders—Cylinder valves—Specification and type testing, Second Edition, 2006–01–15, into §§ 173.301b; 178.71.

(42) ISO 10297:2014 Gas cylinders—Cylinder valves—Specification and type testing, Third Edition, 20014–07–16, into §§ 173.301b; 178.71.

(43) ISO 10461:2005(E), Gas cylinders—Seamless aluminum-alloy gas cylinders—Periodic inspection and testing, Second Edition, 2005–02–15 and Amendment 1, 2006–07–15, into § 180.207.

(44) ISO 10462 (E), Gas cylinders—Transportable cylinders for dissolved acetylene—Periodic inspection and maintenance, Second edition, February 2005, into § 180.207.

(45) ISO 10462:2013 Gas cylinders—Acetylene cylinders—Periodic inspection and maintenance, Third edition, 2013–12–05, into § 180.207.

(46) ISO 10692–2:2001(E), Gas cylinders—Gas cylinder valve connections for use in the micro-electronics industry—Part 2: Specification and type testing for valve to cylinder connections, First Edition, 2001–08–01, into §§ 173.40; 173.302c.

(47) ISO 11114–1:2012(E), Gas cylinders—Compatibility of cylinder and valve materials with gas contents—Part 1: Metallic materials, Second edition, 2012–03–15, into §§ 172.102; 173.301b; 178.71.

(48) ISO 11114–2:2013 Gas cylinders—Compatibility of cylinder and valve materials with gas contents—Part 2: Non-metallic materials, Second edition, 2013–03–21, into §§ 173.301b; 178.71.

(49) ISO 11117:1998(E): Gas cylinders—Valve protection caps and valve guards for industrial and medical gas cylinders.—Design, construction and tests, First edition, 1998–08–01, into § 173.301b.

(50) ISO 11117:2008(E): Gas cylinders—Valve protection caps and valve guards—Design, construction and tests, Second edition, 2008–09–01, into § 173.301b.

(51) ISO 11117:2008/Cor.1:2009(E): Gas cylinders—Valve protection caps and valve guards—Design, construction and tests, Technical Corrigendum 1, 2009–05–01, into § 173.301b.

(52) ISO 11118(E), Gas cylinders—Non-refillable metallic gas cylinders—Specification and test methods, First edition, October 1999, into § 178.71.

(53) ISO 11119–1(E), Gas cylinders—Gas cylinders of composite construction—Specification and test methods—Part 1: Hoop-wrapped composite gas cylinders, First edition, May 2002, into § 178.71.

(54) ISO 11119–1:2012 Gas cylinders—Refillable composite gas cylinders and tubes—Design, construction and testing—Part 1: Hoop wrapped fibre reinforced composite gas cylinders and tubes up to 450 l, Second edition, 2012–07–25, into § 178.71.

(55) ISO 11119–2(E), Gas cylinders—Gas cylinders of composite construction—Specification and test methods—Part 2: Fully wrapped fibre reinforced composite gas cylinders with load-sharing metal liners, First edition, May 2002, into § 178.71.

(56) ISO 11119–2:2012 Gas cylinders—Refillable composite gas cylinders and tubes—Design, construction and testing—Part 2: Fully wrapped fibre reinforced composite gas cylinders and tubes up to 450 l with load-sharing metal liners, Second edition, 2012–07–13, into § 178.71.

(57) ISO 11119–2:2012/Amd 1:2014 Gas cylinders—Refillable composite gas cylinders and tubes—Design, construction and testing—Part 2: Fully wrapped fibre reinforced composite gas cylinders and tubes up to 450 l with load-sharing metal liners, Second edition, 2014–08–11, into § 178.71.

(58) ISO 11119–3(E), Gas cylinders of composite construction—Specification and test methods—Part 3: Fully wrapped fibre reinforced composite gas cylinders with non-load-sharing metallic or non-metallic liners, First edition, September 2002, into § 178.71.

(59) ISO 11119–3:2013 Gas cylinders—Refillable composite gas cylinders and tubes—Design, construction and testing—Part 3: Fully wrapped fibre reinforced composite gas cylinders and tubes up to 450 l with non-load-sharing metallic or non-metallic liners, Second edition, 2013–04–17, into § 178.71.

(60) ISO 11120(E), Gas cylinders—Refillable seamless steel tubes of water capacity between 150 L and 3000 L—Design, construction and testing, First edition, March 1999, into §§ 178.71; 178.75.

(61) ISO 11513:2011(E), Gas cylinders—Refillable welded steel cylinders containing materials for sub-atmospheric gas packaging (excluding acetylene)—Design, construction, testing, use and periodic inspection, First edition, 2011–09–12, into §§ 173.302c; 178.71; 180.207.

(62) ISO 11515:2013 Gas cylinders—Refillable composite reinforced tubes of water capacity between 450 L and 3000 L—Design, construction and testing, First edition, 2013–07–22, into § 178.71.

(63) ISO 11621(E), Gas cylinders—Procedures for change of gas service, First edition, April 1997, into §§ 173.302, 173.336, 173.337.

(64) ISO 11623(E), Transportable gas cylinders—Periodic inspection and testing of composite gas cylinders, First edition, March 2002, into § 180.207.

(65) ISO 13340:2001(E) Transportable gas cylinders—Cylinder valves for non-refillable cylinders—Specification and prototype testing, First edition, 2004–04–01, into §§ 173.301b; 178.71.

(66) ISO 13736:2008(E), Determination of flash point—Abel closed-cup method, Second Edition, 2008–09–15, into § 173.120.

(67) ISO 16111:2008(E), Transportable gas storage devices—Hydrogen absorbed in reversible metal hydride, First Edition, 2008–11–15, into §§ 173.301b; 173.311; 178.71.

(68) ISO 18172–1:2007(E), Gas cylinders—Refillable welded stainless steel cylinders—Part 1: Test pressure 6 MPa and below, First Edition, 2007–03–01, into § 178.71.

(69) ISO 20703:2006(E), Gas cylinders—Refillable welded aluminum-alloy cylinders—Design, construction and testing, First Edition, 2006–05–01, into § 178.71.

* * * * *

(bb) *Transport Canada*, Transport Dangerous Goods. Mailstop: ASD 330 Sparks Street, Ottawa, Ontario, Canada K1A 0N5, 416–973–1868, *http://www.tc.gc.ca.*

(1) Transportation of Dangerous Goods Regulations (Transport Canada TDG Regulations), into §§ 171.12; 171.22; 171.23; 172.401; 172.502; 172.519; 172.602; 173.31; 173.32; 173.33; 180.413.

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(xiii) SOR/2014–152 July 2, 2014.

(xiv) SOR/2014–159 July 2, 2014.

(xv) SOR/2014–159 Erratum July 16, 2014.

(xvi) SOR/2014–152 Erratum August 27, 2014.

(xvii) SOR/2014–306 December 31, 2014.

(xviii) SOR/2014–306 Erratum January 28, 2015.

(xix) SOR/2015–100 May 20, 2015.

* * * * *

(dd) *United Nations,* Bookshop, GA–1B–103, New York, NY 10017, 1–212–963–7680, *https://shop.un.org* or *bookshop@un.org.*

(1) UN Recommendations on the Transport of Dangerous Goods, Model Regulations (UN Recommendations), 19th revised edition, Volumes I and II (2015), into §§ 171.8; 171.12; 172.202; 172.401; 172.407; 172.502; 173.22; 173.24; 173.24b; 173.40; 173.56; 173.192; 173.302b; 173.304b; 178.75; 178.274.

(2) UN Recommendations on the Transport of Dangerous Goods, Manual of Tests and Criteria, (Manual of Tests and Criteria), Sixth revised edition (2015), into §§ 171.24, 172.102; 173.21; 173.56; 173.57; 173.58; 173.60; 173.115; 173.124; 173.125; 173.127; 173.128; 173.137; 173.185; 173.220; 173.221; 173.225, part 173, appendix H; 178.274:

(3) UN Recommendations on the Transport of Dangerous Goods, Globally Harmonized System of Classification and Labelling of Chemicals (GHS), Sixth revised edition (2015), into § 172.401.

* * * * *

■ 8. In § 171.8:

■ a. Revise the definition of "Aerosol";

■ b. Add a definition for "Design life" in alphabetical order;

■ c. Revise the definition of "Large salvage packaging";

■ d. Add definitions for "SAPT" and "Service life" in alphabetical order;

■ e. Revise the definition of "UN tube".

The revisions and additions read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Aerosol means an article consisting of any non-refillable receptacle containing a gas compressed, liquefied or dissolved under pressure, the sole purpose of which is to expel a nonpoisonous (other than a Division 6.1 Packing Group III material) liquid, paste, or powder and fitted with a self-closing release device allowing the contents to be ejected by the gas.

* * * * *

Design life, for composite cylinders and tubes, means the maximum life (in number of years) to which the cylinder or tube is designed and approved in accordance with the applicable standard.

* * * * *

Large salvage packaging means a special packaging into which damaged, defective, leaking or non-conforming hazardous materials packages, or hazardous materials that have spilled or leaked are placed for the purpose of transport for recovery or disposal, that—

(1) Is designed for mechanical handling; and

(2) Has a net mass greater than 400 kg (882 pounds) or a capacity of greater than 450 L (119 gallons), but has a volume of not more than 3 cubic meters (106 cubic feet).

* * * * *

SAPT means self-accelerated polymerization temperature. See § 173.21(f) of this subchapter.

* * * * *

Service life, for composite cylinders and tubes, means the number of years the cylinder or tube is permitted to be in service.

* * * * *

UN tube means a transportable pressure receptacle of seamless or composite construction having with a water capacity exceeding 150 L (39.6 gallons) but not more than 3,000 L (792.5 gallons) that has been marked and certified as conforming to the requirements in part 178 of this subchapter.

* * * * *

■ 9. In § 171.12, paragraphs (a)(1) and (a)(4)(ii) are revised to read as follows:

§ 171.12 North American Shipments.

(a) * * *

(1) A hazardous material transported from Canada to the United States, from the United States to Canada, or transiting the United States to Canada or a foreign destination may be offered for transportation or transported by motor carrier and rail in accordance with the Transport Canada TDG Regulations (IBR, see § 171.7) or an equivalency certificate (permit for equivalent level of safety) issued under the TDG Regulations, as authorized in § 171.22, provided the requirements in §§ 171.22 and 171.23, as applicable, and this section are met. In addition, a cylinder, cargo tank motor vehicle, portable tank or rail tank car authorized by the Transport Canada TDG Regulations may be used for transportation to, from, or within the United States provided the cylinder, cargo tank motor vehicle, portable tank or rail tank car conforms to the applicable requirements of this section. Except as otherwise provided in this subpart and subpart C of this part, the requirements in parts 172, 173, and 178 of this subchapter do not apply for a material transported in accordance with the Transport Canada TDG Regulations.

* * * * *

(4) * * *

(ii) A Canadian Railway Commission (CRC), Board of Transport Commissioners for Canada (BTC), Canadian Transport Commission (CTC) or Transport Canada (TC) specification cylinder manufactured, originally marked, and approved in accordance with the TDG regulations, and in full conformance with the TDG Regulations is authorized for transportation to, from or within the United States provided:

(A) The CRC, BTC, CTC or TC specification cylinder corresponds with a DOT specification cylinder and the markings are the same as those specified in this subchapter, except that the original markings were "CRC", "BTC", "CTC", or "TC";

(B) The CRC, BTC, CTC or TC cylinder has been requalified under a program authorized by the TDG regulations; and

(C) When the regulations authorize a cylinder for a specific hazardous material with a specification marking prefix of "DOT," a cylinder marked "CRC", "BTC", "CTC", or "TC" otherwise bearing the same markings required of the specified "DOT" cylinder may be used.

(D) Transport of the cylinder and the material it contains is in all other respects in conformance with the requirements of this subchapter (*e.g.* valve protection, filling requirements, operational requirements, etc.).

* * * * *

■ 10. In § 171.23, paragraph (a) is revised to read as follows:

§ 171.23 Requirements for specific materials and packagings transported under the ICAO Technical Instructions, IMDG Code, Transport Canada TDG Regulations, or the IAEA Regulations.

* * * * *

(a) *Conditions and requirements for cylinders*—(1) Except as provided in this paragraph, a filled cylinder (pressure receptacle) manufactured to other than a DOT specification or a UN standard in accordance with part 178 of this subchapter, a DOT exemption or special permit cylinder, a TC, CTC, CRC, or BTC cylinder authorized under § 171.12, or a cylinder used as a fire extinguisher in conformance with § 173.309(a) of this subchapter, may not be transported to, from, or within the United States.

(2) Cylinders (including UN pressure receptacles) transported to, from, or within the United States must conform

to the applicable requirements of this subchapter. Unless otherwise excepted in this subchapter, a cylinder must not be transported unless—

(i) The cylinder is manufactured, inspected and tested in accordance with a DOT specification or a UN standard prescribed in part 178 of this subchapter, or a TC, CTC, CRC, or BTC specification set out in the TDG Regulations, except that cylinders not conforming to these requirements must meet the requirements in paragraph (a)(3), (4), or (5) of this section;

(ii) The cylinder is equipped with a pressure relief device in accordance with § 173.301(f) of this subchapter and conforms to the applicable requirements in part 173 of this subchapter for the hazardous material involved;

(iii) The openings on an aluminum cylinder in oxygen service conform to the requirements of this paragraph, except when the cylinder is used for aircraft parts or used aboard an aircraft in accordance with the applicable airworthiness requirements and operating regulations. An aluminum DOT specification cylinder must have an opening configured with straight (parallel) threads. A UN pressure receptacle may have straight (parallel) or tapered threads provided the UN pressure receptacle is marked with the thread type, *e.g.* "17E, 25E, 18P, or 25P" and fitted with the properly marked valve; and

(iv) A UN pressure receptacle is marked with "USA" as a country of approval in conformance with §§ 178.69 and 178.70 of this subchapter, or "CAN" for Canada.

(3) Importation of cylinders for discharge within a single port area: A cylinder manufactured to other than a DOT specification or UN standard in accordance with part 178 of this subchapter, or a TC, CTC, BTC, or CRC specification cylinder set out in the TDG Regulations, and certified as being in conformance with the transportation regulations of another country may be authorized, upon written request to and approval by the Associate Administrator, for transportation within a single port area, provided—

(i) The cylinder is transported in a closed freight container;

(ii) The cylinder is certified by the importer to provide a level of safety at least equivalent to that required by the regulations in this subchapter for a comparable DOT, TC, CTC, BTC, or CRC specification or UN cylinder; and

(iii) The cylinder is not refilled for export unless in compliance with paragraph (a)(4) of this section.

(4) Filling of cylinders for export or for use on board a vessel: A cylinder not manufactured, inspected, tested and marked in accordance with part 178 of this subchapter, or a cylinder manufactured to other than a UN standard, DOT specification, exemption or special permit, or other than a TC, CTC, BTC, or CRC specification, may be filled with a gas in the United States and offered for transportation and transported for export or alternatively, for use on board a vessel, if the following conditions are met:

(i) The cylinder has been requalified and marked with the month and year of requalification in accordance with subpart C of part 180 of this subchapter, or has been requalified as authorized by the Associate Administrator;

(ii) In addition to other requirements of this subchapter, the maximum filling density, service pressure, and pressure relief device for each cylinder conform to the requirements of this part for the gas involved; and

(iii) The bill of lading or other shipping paper identifies the cylinder and includes the following certification: "This cylinder has (These cylinders have) been qualified, as required, and filled in accordance with the DOT requirements for export."

(5) Cylinders not equipped with pressure relief devices: A DOT specification or a UN cylinder manufactured, inspected, tested and marked in accordance with part 178 of this subchapter and otherwise conforms to the requirements of part 173 of this subchapter for the gas involved, except that the cylinder is not equipped with a pressure relief device may be filled with a gas and offered for transportation and transported for export if the following conditions are met:

(i) Each DOT specification cylinder or UN pressure receptacle must be plainly and durably marked "For Export Only";

(ii) The shipping paper must carry the following certification: "This cylinder has (These cylinders have) been retested and refilled in accordance with the DOT requirements for export." and

(iii) The emergency response information provided with the shipment and available from the emergency response telephone contact person must indicate that the pressure receptacles are not fitted with pressure relief devices and provide appropriate guidance for exposure to fire.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, TRAINING REQUIREMENTS, AND SECURITY PLANS

■ 11. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 12. In § 172.101, the Hazardous Materials Table is amended by removing the entries under "[REMOVE]", by adding the entries under "[ADD]" and revising entries under "[REVISE]" in the appropriate alphabetical sequence to read as follows:

§ 172.101 Purpose and use of the hazardous materials table.

* * * * *

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations (see §§ 173.27 and 175.75)		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	[REMOVE]												
	*		*		*	*	*		*	*			
	Engines, internal combustion, *or* Engines, fuel cell, *flammable gas powered.*	9	UN3166		9	135, A200	220	220	220	Forbidden	No limit	A.	
	Engines internal combustion, *or* Engines, fuel cell, *flammable liquid powered.*	9	UN3166		9	135, A200	220	220	220	No limit	No limit	A.	
	*		*		*	*	*		*	*			
	Polyester resin kit	3	UN3269		3	40, 149	165	165	None	5 kg	5 kg	B.	
	*		*		*	*	*		*	*			
	[ADD]												
	*		*		*	*	*		*	*			
	1,3,2-Benzodioxaborole					A210.							
	*		*		*	*	*		*	*			
	Catecholborane					A210.							
	*		*		*	*	*		*	*			
	Engine, internal combustion, flammable gas powered *or* Engine, fuel cell, flammable gas powered *or* Machinery, internal combustion, flammable gas powered *or* Machinery, fuel cell, flammable gas powered.	2.1	UN3529		2.1	363	220	220	220	Forbidden	No limit	E.	
	Engine, internal combustion, flammable liquid powered *or* Engine, fuel cell, flammable liquid powered *or* Machinery, internal combustion, flammable liquid powered *or* Machinery, fuel cell, flammable liquid powered.	3	UN3528		3	363	220	220	220	No limit	No limit	E	149
	Engine, internal combustion *or* Machinery, internal combustion.	9	UN3530		9	363	220	220	220	No limit	No limit	A.	
	*		*		*	*	*		*	*			
	Polyester resin kit, *liquid base material.*	3	UN3269		3	40, 149	165	165	None	5 kg	5 kg	B.	
	Polyester resin kit, *solid base material.*	4.1	UN3527		4.1	40, 157	165	165	None	5 kg	5 kg	B.	
	*		*		*	*	*		*	*			
G	Polymerizing substance, liquid, stabilized, n.o.s.	4.1	UN3532	III	4.1	387, IB3, IP19, N92, T7, TP4, TP6.	None	203	241	10 L	25 L	D	25, 52, 53
G	Polymerizing substance, liquid, temperature controlled, n.o.s.	4.1	UN3534	III	4.1	387, IB3, IP19, N92, T7, TP4, TP6.	None	203	241	Forbidden	Forbidden	D	2, 25, 52, 53
G	Polymerizing substance, solid, stabilized, n.o.s.	4.1	UN3531	III	4.1	387, IB7, IP19, N92, T7, TP4, TP6, TP33.	None	213	240	10 kg	25 kg	D	25, 52, 53
G	Polymerizing substance, solid, temperature controlled, n.o.s.	4.1	UN3533	III	4.1	387, IB7, IP19, N92, T7, TP4, TP6, TP33.	None	213	240	Forbidden	Forbidden	D	2, 25, 52, 53

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations (see §§ 173.27 and 175.75)		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*		*		*	*	*		*	*			
	Rocket motors	1.4C	UN0510		1.4C	109	None	62	62	Forbidden	75 kg	02	25
	*		*		*	*	*		*	*			
	[REVISE]												
	*		*		*	*	*		*	*			
	Acrolein dimer, stabilized	3	UN2607	III	3	387, B1, IB3, T2, TP1	150	203	242	60 L	220 L	C	25, 40
	Acrolein, stabilized	6.1	UN1092	I	6.1, 3	1, 380, 387, B9, B14, B30, B42, B77, T22, TP2, TP7, TP13, TP38, TP44.	None	226	244	Forbidden	Forbidden	D	25, 40
	*		*		*	*	*		*	*			
	Acrylic acid, stabilized	8	UN2218	II	8, 3	387, B2, IB2, T7, TP2	154	202	243	1 L	30 L	C	25, 40
	Acrylonitrile, stabilized	3	UN1093	I	3, 6.1	387, B9, T14, TP2, TP13.	None	201	243	Forbidden	30 L	D	25, 40
	*		*		*	*	*		*	*			
G	Adsorbed gas, toxic, corrosive, n.o.s. *Inhalation hazard zone A.*	2.3	UN3516		2.3, 8	1, 379	None	302c	None	Forbidden	Forbidden	D	40
G	Adsorbed gas, toxic, corrosive, n.o.s. *Inhalation hazard zone B.*	2.3	UN3516		2.3, 8	2, 379, B9, B14	None	302c	None	Forbidden	Forbidden	D	40
G	Adsorbed gas, toxic, corrosive, n.o.s. *Inhalation hazard zone C.*	2.3	UN3516		2.3, 8	3, 379, B14	None	302c	None	Forbidden	Forbidden	D	40
G	Adsorbed gas, toxic, corrosive, n.o.s. *Inhalation hazard zone D.*	2.3	UN3516		2.3, 8	4, 379	None	302c	None	Forbidden	Forbidden	D	40
	*		*		*	*	*		*	*			
G	Alkali metal alcoholates, self-heating, corrosive, n.o.s.	4.2	UN3206	II	4.2, 8	64, A7, IB5, IP2, T3, TP33, W31.	None	212	242	15 kg	50 kg	B.	
				III	4.2, 8	64, A7, IB8, IP3, T1, TP33, W31.	None	213	242	25 kg	100 kg	B.	
	Alkali metal alloys, liquid, n.o.s	4.3	UN1421	I	4.3	A2, A3, A7, B48, N34, W31.	None	201	244	Forbidden	1 L	D	13, 52, 148
	Alkali metal amalgam, liquid	4.3	UN1389	I	4.3	A2, A3, A7, N34, W31	None	201	244	Forbidden	1 L	D	13, 40, 52, 148
	Alkali metal amalgam, solid	4.3	UN3401	I	4.3	IB4, IP1, N40, T9, TP7, TP33, W32.	None	211	242	Forbidden	15 kg	D	13, 52, 148
	Alkali metal amides	4.3	UN1390	II	4.3	A6, A7, A8, A19, A20, IB7, IP2, IP4, T3, TP33, W31, W40.	151	212	241	15 kg	50 kg	E	13, 40, 52, 148
	Alkali metal dispersions, flammable *or* Alkaline earth metal dispersions, flammable.	4.3	UN3482	I	4.3, 3	A2, A3, A7, W31	None	201	244	Forbidden	1 L	D	13, 52, 148
	Alkali metal dispersions, *or* Alkaline earth metal dispersions.	4.3	UN1391	I	4.3	A2, A3, A7, W31	None	201	244	Forbidden	1 L	D	13, 52, 148
	*		*		*	*	*		*	*			
G	Alkaline earth metal alcoholates, n.o.s.	4.2	UN3205	II	4.2	65, A7, IB6, IP2, T3, TP33, W31.	None	212	241	15 kg	50 kg	B.	
				III	4.2	65, A7, IB8, IP3, T1, TP33, W31.	None	213	241	25 kg	100 kg	B.	
	Alkaline earth metal alloys, n.o.s	4.3	UN1393	II	4.3	A19, IB7, IP2, IP4, T3, TP33, W31, W40.	151	212	241	15 kg	50 kg	E	13, 52, 148

Alkaline earth metal amalgams, liquid.	4.3	UN1392	I	4.3	A19, N34, N40, W31	None	201	244	Forbidden	1 L	E	13, 40, 52, 148
Alkaline earth metal amalgams, solid.	4.3	UN3402	I	4.3	A19, N34, N40, T9, TP7, TP33, W32.	None	211	242	Forbidden	15 kg	D	13, 52, 14
*	*	*	*	*	*	*						
Allyl isothiocyanate, stabilized	6.1	UN1545	II	6.1, 3	387, A3, A7, IB2, T7, TP2.	None	202	243	Forbidden	60 L	D	25, 40
*	*	*	*	*	*	*						
Allyltrichlorosilane, stabilized	8	UN1724	II	8, 3	387, A7, B2, B6, N34, T10, TP2, TP7, TP13.	None	206	243	Forbidden	30 L	C	25, 40
*	*	*	*	*	*	*						
Aluminum carbide	4.3	UN1394	II	4.3	A20, IB7, IP2, IP4, N41, T3, TP33, W31, W40.	151	212	242	15 kg	50 kg	A	13, 52, 148
*	*	*	*	*	*	*						
Aluminum ferrosilicon powder	4.3	UN1395	II	4.3, 6.1	A19, IB5, IP2, T3, TP33, W31, W40.	151	212	242	15 kg	50 kg	A	13, 39, 40, 52, 53, 85, 103, 148
			III	4.3, 6.1	A19, A20, IB4	151	213	241	25 kg	100 kg	A	13, 39, 40, 52, 53, 85, 103, 148
Aluminum hydride	4.3	UN2463	I	4.3	A19, N40, W32	None	211	242	Forbidden	15 kg	E	13, 148
*	*	*	*	*	*	*						
Aluminum phosphide	4.3	UN1397	I	4.3, 6.1	A8, A19, N40, W32	None	211	242	Forbidden	15 kg	E	13, 40, 52, 85, 148
Aluminum phosphide pesticides	6.1	UN3048	I	6.1	A8, IB7, IP1, T6, TP33, W31.	None	211	242	Forbidden	15 kg	E	40, 85
Aluminum powder, coated	4.1	UN1309	II	4.1	IB8, IP2, IP4, T3, TP33, W100.	151	212	240	15 kg	50 kg	A	13, 39, 52, 53, 74, 101, 147, 148
			III	4.1	B134, IB8, IP4, T1, TP33, W100.	151	213	240	25 kg	100 kg	A	13, 39, 52, 53, 74, 101, 147, 148
Aluminum powder, uncoated	4.3	UN1396	II	4.3	A19, A20, IB7, IP2, IP4, T3, TP33, W31, W40.	151	212	242	15 kg	50 kg	A	13, 39, 52, 53, 148
			III	4.3	A19, A20, IB8, IP4, T1, TP33, W31, W40.	151	213	241	25 kg	100 kg	A	13, 39, 52, 53, 148
*	*	*	*	*	*	*						
Aluminum silicon powder, uncoated	4.3	UN1398	III	4.3	A1, A19, IB8, IP4, T1, TP33, W31, W40.	151	213	241	25 kg	100 kg	A	13, 39, 40, 52, 53, 85, 103, 148
Aluminum smelting by-products *or* Aluminum remelting by-products.	4.3	UN3170	II	4.3	128, B115, IB7, IP2, IP4, T3, TP33, W31, W40.	None	212	242	15 kg	50 kg	B	13, 85, 103, 148
			III	4.3	128, B115, IB8, IP4, T1, TP33, W31.	None	213	241	25 kg	100 kg	B	13, 85, 103, 148
*	*	*	*	*	*	*						
2-Amino-4,6-Dinitrophenol, wetted *with not less than 20 percent water by mass.*	4.1	UN3317	I	4.1	23, A8, A19, A20, N41, W31.	None	211	None	1 kg	15 kg	E	28, 36

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations (see §§ 173.27 and 175.75)		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*		*		*	*	*		*	*			
	N-Aminoethylpiperazine	8	UN2815	III	8, 6.1	IB3, T4, TP1	154	203	241	5 L	60 L	B	12, 25, 40
	*		*		*	*	*		*	*			
I	Ammonia, anhydrous	2.3	UN1005		2.3, 8	4, 379, N87, T50	None	304	314, 315	Forbidden	Forbidden	D	40, 52, 57
D	Ammonia, anhydrous	2.2	UN1005		2.2	13, 379, T50	None	304	314, 315	Forbidden	Forbidden	D	40, 52, 57
	*		*		*	*	*		*	*			
	Ammonia solution, *relative density between 0.880 and 0.957 at 15 degrees C in water, with more than 10 percent but not more than 35 percent ammonia.*	8	UN2672	III	8	336, IB3, IP8, T7, TP2	154	203	241	5L	60L	A	40, 52, 85
	*		*		*	*	*		*	*			
	Ammonium picrate, wetted *with not less than 10 percent water, by mass.*	4.1	UN1310	I	4.1	23, A2, N41, W31	None	211	None	0.5 kg	0.5 kg	D	28, 36
	*		*		*	*	*		*	*			
	Arsenic acid, liquid	6.1	UN1553	I	6.1	T20, TP2, TP7, TP13, W31.	None	201	243	1 L	30 L	B	46
	*		*		*	*	*		*	*			
	Barium	4.3	UN1400	II	4.3	A19, IB7, IP2, IP4, T3, TP33, W31, W40.	151	212	241	15 kg	50 kg	E	13, 52, 148
	Barium alloys, pyrophoric	4.2	UN1854	I	4.2	T21, TP7, TP33, W31	None	181	None	Forbidden	Forbidden	D	13, 148
	*		*		*	*	*		*	*			
	Barium azide, wetted *with not less than 50 percent water, by mass.*	4.1	UN1571	I	4.1, 6.1	162, A2, W31	None	182	None	Forbidden	0.5 kg	D	28, 36
	*		*		*	*	*		*	*			
	Barium cyanide	6.1	UN1565	I	6.1	IB7, IP1, N74, N75, T6, TP33, W31.	None	211	242	5 kg	50 kg	A	40, 52
	*		*		*	*	*		*	*			
	Barium peroxide	5.1	UN1449	II	5.1, 6.1	A9, IB6, IP2, T3, TP33, W100.	152	212	242	5 kg	25 kg	C	13, 52, 66, 75, 148
	*		*		*	*	*		*	*			
	Beryllium, powder	6.1	UN1567	II	6.1, 4.1	IB8, IP2, IP4, T3, TP33, W100.	153	212	242	15 kg	50 kg	A	13, 147, 148
	Bicyclo [2,2,1] hepta-2,5-diene, stabilized *or* 2,5-Norbornadiene, stabilized.	3	UN2251	II	3	387, IB2, T7, TP2	150	202	242	5 L	60 L	D	25
	*		*		*	*	*		*	*			
	Boron trifluoride diethyl etherate	8	UN2604	I	8, 3	A3, A19, T10, TP2, W31.	None	201	243	0.5 L	2.5 L	D	40
	*		*		*	*	*		*	*			
	Boron trifluoride dimethyl etherate	4.3	UN2965	I	4.3, 8, 3	A19, T10, TP2, TP7, TP13, W31.	None	201	243	Forbidden	1 L	D	21, 25, 40, 49, 100

*		*		*	*	*		*	*			
Bromobenzyl cyanides, liquid	6.1	UN1694	I	6.1	T14, TP2, TP13, W31	None	201	243	Forbidden	30 L	D	12, 25, 40, 52
Bromobenzyl cyanides, solid	6.1	UN3449	I	6.1	T6, TP33, W31	None	211	242	5 kg	50 kg	D	12, 25, 40, 52
*		*		*	*	*		*	*			
Butadienes, stabilized *or* Butadienes and Hydrocarbon mixture, stabilized *containing more than 40% butadienes.*	2.1	UN1010		2.1	387, T50	306	304	314, 315	Forbidden	150 kg	B	25, 40
*		*		*	*	*		*	*			
Butyl acrylates, stabilized	3	UN2348	III	3	387, B1, IB3, T2, TP1	150	203	242	60 L	220 L	C	25
*		*		*	*	*		*	*			
Butyl benzenes	3	UN2709	III	3	B1, IB3, T2, TP2	150	203	242	60 L	220 L	A.	
*		*		*	*	*		*	*			
n-Butyl methacrylate, stabilized	3	UN2227	III	3	387, B1, IB3, T2, TP1	150	203	242	60 L	220 L	C	25
*		*		*	*	*		*	*			
Butyl vinyl ether, stabilized	3	UN2352	II	3	387, IB2, T4, TP1	150	202	242	5 L	60 L	C	25, 40
*		*		*	*	*		*	*			
1,2-Butylene oxide, stabilized	3	UN3022	II	3	387, IB2, T4, TP1	150	202	242	5 L	60 L	C	25, 27, 49
*		*		*	*	*		*	*			
Calcium	4.3	UN1401	II	4.3	IB7, IP2, IP4, T3, TP33, W31, W40.	151	212	241	15 kg	50kg	E	13, 52, 148
*		*		*	*	*		*	*			
Calcium carbide	4.3	UN1402	I	4.3	A1, A8, B55, B59, IB4, IP1, N34, T9, TP7, TP33, W32.	None	211	242	Forbidden	15 kg	B	13, 52, 148
			II	4.3	A1, A8, B55, B59, IB7, IP2, IP4, N34, T3, TP33, W31, W40.	151	212	241	15 kg	50 kg	B	13, 52, 148
*		*		*	*	*		*	*			
Calcium cyanamide *with more than 0.1 percent of calcium carbide.*	4.3	UN1403	III	4.3	A1, A19, IB8, IP4, T1, TP33, W31, W40.	151	213	241	25 kg	100 kg	A	13, 52, 148
Calcium cyanide	6.1	UN1575	I	6.1	IB7, IP1, N79, N80, T6, TP33, W31.	None	211	242	5 kg	50 kg	A	40, 52
Calcium dithionite *or* Calcium hydrosulfite.	4.2	UN1923	II	4.2	A19, A20, IB6, IP2, T3, TP33, W31.	None	212	241	15 kg	50 kg	E	13
Calcium hydride	4.3	UN1404	I	4.3	A19, N40, W32	None	211	242	Forbidden	15 kg	E	13, 52, 148
*		*		*	*	*		*	*			
Calcium manganese silicon	4.3	UN2844	III	4.3	A1, A19, IB8, IP4, T1, TP33, W31.	151	213	241	25 kg	100 kg	A	13, 52, 85, 103, 148
*		*		*	*	*		*	*			
Calcium peroxide	5.1	UN1457	II	5.1	IB6, IP2, T3, TP33, W100.	152	212	242	5 kg	25 kg	C	13, 52, 66, 75, 148
Calcium phosphide	4.3	UN1360	I	4.3, 6.1	A8, A19, N40, W32	None	211	242	Forbidden	15 kg	E	13, 40, 52, 85, 148
Calcium, pyrophoric *or* Calcium alloys, pyrophoric.	4.2	UN1855	I	4.2	W31	None	187	None	Forbidden	Forbidden	D	13, 148
*		*		*	*	*		*	*			
Calcium silicide	4.3	UN1405	II	4.3	A19, IB7, IP2, IP4, T3, TP33, W31.	151	212	241	15 kg	50 kg	B	13, 52, 85, 103, 148
			III	4.3	A1, A19, IB8, IP4, T1, TP33, W31, W40.	151	213	241	25 kg	100 kg	B	13, 52, 85, 103, 148

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations (see §§ 173.27 and 175.75)		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*		*		*	*	*		*	*			
I	Carbon, activated	4.2	UN1362	III	4.2	IB8, IP3, T1, TP33, W31.	None	213	241	0.5 kg	0.5 kg	A	12, 25
	*		*		*	*	*		*	*			
	Carbon disulfide	3	UN1131	I	3, 6.1	B16, T14, TP2, TP7, TP13, W31.	None	201	243	Forbidden	Forbidden	D	40, 78, 115
	*		*		*	*	*		*	*			
	Cerium, *slabs, ingots, or rods*	4.1	UN1333	II	4.1	IB8, IP2, IP4, N34, W100.	None	212	240	15 kg	50 kg	A	13, 74, 91, 147, 148
	Cerium, *turnings or gritty powder*	4.3	UN3078	II	4.3	A1, IB7, IP2, IP4, T3, TP33, W31, W40.	151	212	242	15 kg	50 kg	E	13, 52, 148
	Cesium *or* Caesium	4.3	UN1407	I	4.3	A7, A19, IB4, IP1, N34, N40, W32.	None	211	242	Forbidden	15 kg	D	13, 52, 148
	*		*		*	*	*		*	*			
	Chloric acid aqueous solution, *with not more than 10 percent chloric acid.*	5.1	UN2626	II	5.1	IB2, T4, TP1, W31	None	229	None	Forbidden	Forbidden	D	56, 58
	*		*		*	*	*		*	*			
	Chloroprene, stabilized	3	UN1991	I	3, 6.1	387, B57, T14, TP2, TP13.	None	201	243	Forbidden	30 L	D	25, 40
	*		*		*	*	*		*	*			
	Chlorosilanes, water-reactive, flammable, corrosive, n.o.s.	4.3	UN2988	I	4.3, 3, 8	A2, T14, TP2, TP7, TP13, W31.	None	201	244	Forbidden	1 L	D	13, 21, 40, 49, 100, 147, 148
	*		*		*	*	*		*	*			
	Chromium trioxide, anhydrous	5.1	UN1463	II	5.1, 6.1, 8.	IB8, IP2, IP4, T3, TP33, W31.	None	212	242	5 kg	25 kg	A	66, 90
	*		*		*	*	*		*	*			
G	Corrosive solids, water-reactive, n.o.s.	8	UN3096	I	8, 4.3	IB4, IP1, T6, TP33	None	211	243	1 kg	25 kg	D	13, 148
				II	8, 4.3	IB6, IP2, T3, TP33, W100.	None	212	242	15 kg	50 kg	D	13, 148
	*		*		*	*	*		*	*			
	Crotonaldehyde *or* Crotonaldehyde, stabilized.	6.1	UN1143	I	6.1, 3	2, 175, 387, B9, B14, B32, B77, T20, TP2, TP13, TP38, TP45.	None	227	244	Forbidden	Forbidden	D	25, 40
	*		*		*	*	*		*	*			
	Cyanogen bromide	6.1	UN1889	I	6.1, 8	A6, A8, T6, TP33, W31	None	211	242	1 kg	15 kg	D	40, 52
	Cyanogen chloride, stabilized	2.3	UN1589		2.3, 8	1, 387	None	192	245	Forbidden	Forbidden	D	25, 40
	*		*		*	*	*		*	*			
	Cycloheptane	3	UN2241	II	3	IB2, T4, TP2	150	202	242	5 L	60 L	B	40
	*		*		*	*	*		*	*			
	Decaborane	4.1	UN1868	II	4.1, 6.1	A19, A20, IB6, IP2, T3, TP33, W31.	None	212	None	Forbidden	50 kg	A	74

*		*		*	*	*	*	*				
Diketene, stabilized	6.1	UN2521	I	6.1, 3	2, 387, B9, B14, B32, T20, TP2, TP13, TP38, TP45.	None	227	244	Forbidden	Forbidden	D	25, 26, 27, 40
*		*		*	*	*	*	*				
Dinitrophenol, wetted *with not less than 15 percent water, by mass.*	4.1	UN1320	I	4.1, 6.1	23, A8, A19, A20, N41, W31.	None	211	None	1 kg	15 kg	E	28, 36
*		*		*	*	*	*	*				
Dinitrophenolates, wetted *with not less than 15 percent water, by mass.*	4.1	UN1321	I	4.1, 6.1	23, A8, A19, A20, N41, W31.	None	211	None	1 kg	15 kg	E	28, 36
*		*		*	*	*	*	*				
Dinitroresorcinol, wetted *with not less than 15 percent water, by mass.*	4.1	UN1322	I	4.1	23, A8, A19, A20, N41, W31.	None	211	None	1 kg	15 kg	E	28, 36
*		*		*	*	*	*	*				
Diphenylamine chloroarsine	6.1	UN1698	I	6.1	T6, TP33, W31	None	201	None	Forbidden	Forbidden	D	40
Diphenylchloroarsine, liquid	6.1	UN1699	I	6.1	A8, B14, B32, N33, N34, T14, TP2, TP13, TP27, W31.	None	201	243	Forbidden	30 L	D	40
Diphenylchloroarsine, solid	6.1	UN3450	I	6.1	IB7, IP1, T6, TP33, W31.	None	211	242	5 kg	50 kg	D	40
*		*		*	*	*	*	*				
Dipicryl sulfide, wetted *with not less than 10 percent water, by mass.*	4.1	UN2852	I	4.1	162, A2, N41, N84, W31.	None	211	None	Forbidden	0.5 kg	D	28, 36
*		*		*	*	*	*	*				
Dipropylamine	3	UN2383	II	3, 8	387, IB2, T7, TP1	150	202	243	1 L	5 L	B	25
*		*		*	*	*	*	*				
Divinyl ether, stabilized	3	UN1167	I	3	387, A7, T11, TP2	None	201	243	1 L	30 L	E	25, 40
*		*		*	*	*	*	*				
Ethyl acrylate, stabilized	3	UN1917	II	3	387, IB2, T4, TP1, TP13.	150	202	242	5 L	60 L	C	25, 40
*		*		*	*	*	*	*				
Ethyl methacrylate, stabilized	3	UN2277	II	3	387, IB2, T4, TP1	150	202	242	5 L	60 L	C	25
*		*		*	*	*	*	*				
Ethylacetylene, stabilized	2.1	UN2452		2.1	387, N88	None	304	314, 315	Forbidden	150 kg	B	25, 40
*		*		*	*	*	*	*				
Ethyldichlorosilane	4.3	UN1183	I	4.3, 8, 3	A2, A3, A7, N34, T14, TP2, TP7, TP13, W31.	None	201	244	Forbidden	1 L	D	21, 40, 49, 100
*		*		*	*	*	*	*				
Ethyleneimine, stabilized	6.1	UN1185	I	6.1, 3	1, 387, B9, B14, B30, B77, N25, N32, T22, TP2, TP13, TP38, TP44.	None	226	244	Forbidden	Forbidden	D	25, 40
*		*		*	*	*	*	*				
Ferrocerium	4.1	UN1323	II	4.1	59, A19, IB8, IP2, IP4, T3, TP33, W100.	151	212	240	15 kg	50 kg	A	13, 147, 148
Ferrosilicon *with 30 percent or more but less than 90 percent silicon.*	4.3	UN1408	III	4.3, 6.1	A1, A19, B6, IB8, IP4, IP7, T1, TP33, W100.	151	213	240	25 kg	100 kg	A	13, 40, 52, 53, 85, 103, 148

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations (see §§ 173.27 and 175.75)		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*		*		*	*	*		*	*			
	Ferrous metal borings *or* Ferrous metal shavings *or* Ferrous metal turnings *or* Ferrous metal cuttings *in a form liable to self-heating.*	4.2	UN2793	III	4.2	A1, A19, B134, IB8, IP4, IP7, W100.	None	213	241	25 kg	100 kg	A	13, 148
	*		*		*	*	*		*	*			
A W	Fibers *or* Fabrics, animal *or* vegetable *or* Synthetic, n.o.s. *with animal or vegetable oil.*	4.2	UN1373	III	4.2	137, IB8, IP3, T1, TP33, W31.	None	213	241	Forbidden	Forbidden	A.	
	*		*		*	*	*		*	*			
	Fish meal, unstablized *or* Fish scrap, unstabilized.	4.2	UN1374	II	4.2	155, A1, A19, IB8, IP2, IP4, T3, TP33, W31, W40.	None	212	241	Forbidden	Forbidden	B	18, 25, 128
	*		*		*	*	*		*	*			
	Hafnium powder, dry	4.2	UN2545	I	4.2	W31	None	211	242	Forbidden	Forbidden	D	13, 148
				II	4.2	A19, A20, IB6, IP2, N34, T3, TP33, W31.	None	212	241	15 kg	50 kg	D	13, 148
				III	4.2	B135, IB8, IP4, T1, TP33, W31.	None	213	241	25 kg	100 kg	D	13, 148
	Hafnium powder, wetted *with not less than 25 percent water (a visible excess of water must be present) (a) mechanically produced, particle size less than 53 microns; (b) chemically produced, particle size less than 840 microns.*	4.1	UN1326	II	4.1	A6, A19, A20, IB6, IP2, N34, T3, TP33, W31, W40.	None	212	241	15 kg	50 kg	E	74
	*		*		*	*	*		*	*			
	Heptanes	3	UN1206	II	3	IB2, T4, TP2	150	202	242	5 L	60 L	B.	
	*		*		*	*	*		*	*			
	Hexanes	3	UN1208	II	3	IB2, T4, TP2	150	202	242	5 L	60 L	E.	
	*		*		*	*	*		*	*			
	Hydrogen cyanide, stabilized *with less than 3 percent water.*	6.1	UN1051	I	6.1, 3	1, 387, B35, B61, B65, B77, B82.	None	195	244	Forbidden	Forbidden	D	25, 40
	Hydrogen cyanide, stabilized, *with less than 3 percent water and absorbed in a porous inert material.*	6.1	UN1614	I	6.1	5, 387	None	195	None	Forbidden	Forbidden	D	25, 40
	*		*		*	*	*		*	*			
	Iron oxide, spent, *or* Iron sponge, spent *obtained from coal gas purification.*	4.2	UN1376	III	4.2	B18, B134, IB8, IP4, T1, TP33, W100.	None	213	240	Forbidden	Forbidden	E	13, 148
	*		*		*	*	*		*	*			
	Isobutyl acrylate, stabilized	3	UN2527	III	3	387, B1, IB3, T2, TP1	150	203	242	60 L	220 L	C	25
	*		*		*	*	*		*	*			
	Isobutyl methacrylate, stabilized	3	UN2283	III	3	387, B1, IB3, T2, TP1	150	203	242	60 L	220 L	C	25

	*		*		*	*	*		*	*			
G	Isocyanates, flammable, toxic, n.o.s. *or* Isocyanate solutions, flammable, toxic, n.o.s. *flash point less than 23 degrees C.*	3	UN2478	II	3, 6.1	5, A3, A7, IB2, T11, TP2, TP13, TP27, W31.	150	202	243	1 L	60 L	D	40
				III	3, 6.1	5, A3, A7, IB3, T7, TP1, TP13, TP28, W31.	150	203	242	60 L	220 L	A.	
	*		*		*	*	*		*	*			
	Isoprene, stabilized	3	UN1218	I	3	387, T11, TP2	150	201	243	1 L	30 L	D	25
	*		*		*	*	*		*	*			
	Life-saving appliances, not self inflating *containing dangerous goods as equipment.*	9	UN3072		None	182	None	219	None	No limit	No limit	A	122
	*		*		*	*	*		*	*			
	Lithium	4.3	UN1415	I	4.3	A7, A19, IB4, IP1, N45, T9, TP7, TP33, W32.	151	211	244	Forbidden	15 kg	D	13, 52, 148
	*		*		*	*	*		*	*			
	Lithium aluminum hydride	4.3	UN1410	I	4.3	A19, W32	None	211	242	Forbidden	15 kg	E	13, 52, 148
	*		*		*	*	*		*	*			
	Lithium borohydride	4.3	UN1413	I	4.3	A19, N40, W32	None	211	242	Forbidden	15 kg	E	13, 52, 148
	Lithium ferrosilicon	4.3	UN2830	II	4.3	A19, IB7, IP2, IP4, T3, TP33, W31, W40.	151	212	241	15 kg	50 kg	E	13, 40, 85, 103, 148
	Lithium hydride	4.3	UN1414	I	4.3	A19, N40, W32	None	211	242	Forbidden	15 kg	E	13, 52, 148
	Lithium hydride, fused solid	4.3	UN2805	II	4.3	A8, A19, A20, IB4, T3, TP33, W31, W40.	151	212	241	15 kg	50 kg	E	13, 52, 148
	*		*		*	*	*		*	*			
	Lithium ion batteries *including lithium ion polymer batteries.*	9	UN3480		9	422, A51, A54	185	185	185	5 kg	35 kg	A.	
	Lithium ion batteries contained in equipment *including lithium ion polymer batteries.*	9	UN3481		9	181, 422, A54	185	185	185	5 kg	35 kg	A.	
	Lithium ion batteries packed with equipment *including lithium ion polymer batteries.*	9	UN3481		9	181, 422, A54	185	185	185	5 kg	35 kg	A.	
	Lithium metal batteries *including lithium alloy batteries.*	9	UN3090		9	422, A54	185	185	185	Forbidden	35 kg	A.	
	Lithium metal batteries contained in equipment *including lithium alloy batteries.*	9	UN3091		9	181, 422, A54, A101	185	185	185	5 kg	35 kg	A.	
	Lithium metal batteries packed with equipment *including lithium alloy batteries.*	9	UN3091		9	181, 422, A54	185	185	185	5 kg	35 kg	A.	
	*		*		*	*	*		*	*			
	Lithium nitride	4.3	UN2806	I	4.3	A19, IB4, IP1, N40, W32.	None	211	242	Forbidden	15 kg	E.	
	Lithium peroxide	5.1	UN1472	II	5.1	A9, IB6, IP2, N34, T3, TP33, W100.	152	212	None	5 kg	25 kg	C	13, 52, 66, 75, 148
	Lithium silicon	4.3	UN1417	II	4.3	A19, A20, IB7, IP2, IP4, T3, TP33, W31, W40.	151	212	241	15 kg	50 kg	A	13, 85, 103, 148
	*		*		*	*	*		*	*			
	Magnesium aluminum phosphide	4.3	UN1419	I	4.3, 6.1	A19, N34, N40, W32	None	211	242	Forbidden	15 kg	E	13, 40, 52, 85, 148

							(8)			(9)		(10)	
Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	Packaging (§ 173.***)			Quantity limitations (see §§ 173.27 and 175.75)		Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*		*		*	*	*		*	*			
	Magnesium diamide	4.2	UN2004	II	4.2	A8, A19, A20, IB6, T3, TP33, W31.	None	212	241	15 kg	50 kg	C	13, 148
	*		*		*	*	*		*	*			
	Magnesium granules, coated, *particle size not less than 149 microns.*	4.3	UN2950	III	4.3	A1, A19, IB8, IP4, T1, TP33, W100.	151	213	240	25 kg	100 kg	A	13, 52, 148
	Magnesium hydride	4.3	UN2010	I	4.3	A19, N40, W32	None	211	242	Forbidden	15 kg	E	13, 52, 148
	Magnesium *or* Magnesium alloys *with more than 50 percent magnesium in pellets, turnings or ribbons.*	4.1	UN1869	III	4.1	A1, B134, IB8, IP4, T1, TP33, W100.	151	213	240	25 kg	100 kg	A	13, 39, 52, 53, 74, 101, 147, 148
	*		*		*	*	*		*	*			
	Magnesium peroxide	5.1	UN1476	II	5.1	IB6, IP2, T3, TP33, W100.	152	212	242	5 kg	25 kg	C	13, 52, 66, 75, 148
	Magnesium phosphide	4.3	UN2011	I	4.3, 6.1	A19, N40, W32	None	211	None	Forbidden	15 kg	E	13, 40, 52, 85, 148
	Magnesium, powder *or* Magnesium alloys, powder.	4.3	UN1418	I	4.3, 4.2	A19, B56, W32	None	211	244	Forbidden	15 kg	A	13, 39, 52, 148
				II	4.3, 4.2	A19, B56, IB5, IP2, T3, TP33, W31, W40.	None	212	241	15 kg	50 kg	A	13, 39, 52, 148
				III	4.3, 4.2	A19, B56, IB8, IP4, T1, TP33, W31.	None	213	241	25 kg	100 kg	A	13, 39, 52, 148
	*		*		*	*	*		*	*			
	Magnesium silicide	4.3	UN2624	II	4.3	A19, A20, IB7, IP2, IP4, T3, TP33, W31, W40.	151	212	241	15 kg	50 kg	B	13, 85, 103, 148
	*		*		*	*	*		*	*			
	Maneb *or* Maneb preparations *with not less than 60 percent maneb.*	4.2	UN2210	III	4.2, 4.3	57, A1, A19, IB6, T1, TP33, W100.	None	213	242	25 kg	100 kg	A	13, 34, 148
	Maneb stabilized *or* Maneb preparations, stabilized *against self-heating.*	4.3	UN2968	III	4.3	54, A1, A19, IB8, IP4, T1, TP33, W100.	151	213	242	25 kg	100 kg	B	13, 25, 34, 52, 148
	*		*		*	*	*		*	*			
+	Mercuric potassium cyanide	6.1	UN1626	I	6.1	IB7, IP1, N74, N75, T6, TP33, W31.	None	211	242	5 kg	50 kg	A	52
	*		*		*	*	*		*	*			
G	Metal catalyst, dry	4.2	UN2881	I	4.2	N34, T21, TP7, TP33, W31.	None	187	None	Forbidden	Forbidden	C	13, 147, 148
				II	4.2	IB6, IP2, N34, T3, TP33, W31.	None	187	242	Forbidden	50 kg	C	13, 147, 148
				III	4.2	B135, IB8, IP4, N34, T1, TP33, W31.	None	187	241	25 kg	100 kg	C	13, 147, 148
G	Metal catalyst, wetted *with a visible excess of liquid.*	4.2	UN1378	II	4.2	A2, A8, IB1, N34, T3, TP33, W31, W40.	None	212	None	Forbidden	50 kg	C.	
	Metal hydrides, flammable, n.o.s	4.1	UN3182	II	4.1	A1, IB4, T3, TP33, W31, W40.	151	212	240	15 kg	50 kg	E.	
				III	4.1	A1, IB4, T1, TP33, W31.	151	213	240	25 kg	100 kg	E.	

	Metal hydrides, water reactive, n.o.s	4.3	UN1409	I	4.3	A19, N34, N40, W32	None	211	242	Forbidden	15 kg	D	13, 52, 148
				II	4.3	A19, IB4, N34, N40, T3, TP33, W31, W40.	151	212	242	15 kg	50 kg	D	13, 52, 148
	Metal powder, self-heating, n.o.s	4.2	UN3189	II	4.2	IB6, IP2, T3, TP33, W31.	None	212	241	15 kg	50 kg	C	13, 148
				III	4.2	B135, IB8, IP4, T1, TP33, W31.	None	213	241	25 kg	100 kg	C	13, 148
	Metal powders, flammable, n.o.s	4.1	UN3089	II	4.1	IB8, IP2, IP4, T3, TP33, W100.	151	212	240	15 kg	50 kg	B	13, 74, 147, 148
				III	4.1	IB8, IP2, IP4, T1, TP33, W100.	151	213	240	25 kg	100 kg	B	13, 74, 147, 148
	*	*	*		*	*	*		*	*			
G	Metal salts of organic compounds, flammable, n.o.s.	4.1	UN3181	II	4.1	A1, IB8, IP2, IP4, T3, TP33, W31.	151	212	240	15 kg	50 kg	B	40
				III	4.1	A1, IB8, IP3, T1, TP33, W31.	151	213	240	25 kg	100 kg	B	40
	*	*	*		*	*	*		*	*			
G	Metallic substance, water-reactive, n.o.s.	4.3	UN3208	I	4.3	A7, IB4, W32	None	211	242	Forbidden	15 kg	E	13, 40, 148
				II	4.3	A7, IB7, IP2, IP4, T3, TP33, W31.	151	212	242	15 kg	50 kg	E	13, 40, 148
				III	4.3	A7, IB8, IP4, T1, TP33, W31, W40.	151	213	241	25 kg	100 kg	E	13, 40, 148
G	Metallic substance, water-reactive, self-heating, n.o.s.	4.3	UN3209	I	4.3, 4.2	A7, W32	None	211	242	Forbidden	15 kg	E	13, 40, 148
				II	4.3, 4.2	A7, IB5, IP2, T3, TP33, W32, W40.	None	212	242	15 kg	50 kg	E	13, 40, 148
				III	4.3, 4.2	A7, IB8, IP4, T1, TP33, W32.	None	213	242	25 kg	100 kg	E	13, 40, 148
	Methacrylaldehyde, stabilized	3	UN2396	II	3, 6.1	45, 387, IB2, T7, TP1, TP13.	150	202	243	1 L	60 L	D	25, 40
	Methacrylic acid, stabilized	8	UN2531	II	8	41, 387, IB2, T7, TP1, TP18, TP30.	154	202	242	1 L	30 L	C	25, 40
+	Methacrylonitrile, stabilized	6.1	UN3079	I	6.1, 3	2, 387, B9, B14, B32, T20, TP2, TP13, TP38, TP45.	None	227	244	Forbidden	Forbidden	D	12, 25, 40
	*	*	*		*	*	*		*	*			
	Methyl acetylene and propadiene mixtures, stabilized.	2.1	UN1060		2.1	387, N88, T50	306	304	314, 315	Forbidden	150 kg	B	25, 40
	Methyl acrylate, stabilized	3	UN1919	II	3	387, IB2, T4, TP1, TP13.	150	202	242	5 L	60 L	C	25
	*	*	*		*	*	*		*	*			
	Methyl isopropenyl ketone, stabilized.	3	UN1246	II	3	387, IB2, T4, TP1	150	202	242	5 L	60 L	C	25
	*	*	*		*	*	*		*	*			
	Methyl methacrylate monomer, stabilized.	3	UN1247	II	3	387, IB2, T4, TP1	150	202	242	5 L	60 L	C	25, 40
	*	*	*		*	*	*		*	*			
	Methyl vinyl ketone, stabilized	6.1	UN1251	I	6.1, 3, 8	1, 387, B9, B14, B30, T22, TP2, TP13, TP38, TP44.	None	226	244	Forbidden	Forbidden	B	21, 25, 40, 100
	*	*	*		*	*	*		*	*			
	N-Methylaniline	6.1	UN2294	III	6.1	IB3, T4, TP2	153	203	241	60 L	220 L	A.	
	*	*	*		*	*	*		*	*			
	Methylcyclohexane	3	UN2296	II	3	B1, IB2, T4, TP2	150	202	242	5 L	60 L	B.	

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations (see §§ 173.27 and 175.75)		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*		*		*	*	*		*	*			
	Methyldichlorosilane	4.3	UN1242	I	4.3, 8, 3	A2, A3, A7, B6, B77, N34, T14, TP2, TP7, TP13, W31.	None	201	243	Forbidden	1 L	D	21, 40, 49, 100
	Nitric acid *other than red fuming, with more than 20 percent and less than 65 percent nitric acid.*	8	UN2031	II	8	A6, A212, B2, B47, B53, IB2, IP15, T8, TP2.	None	158	242	Forbidden	30 L	D	44, 66, 74, 89, 90
	*		*		*	*	*		*	*			
	Nitrocellulose, *with not more than 12.6 percent nitrogen, by dry mass* mixture with *or* without plasticizer, with *or* without pigment.	4.1	UN2557	II	4.1	44, W31	151	212	240	1 kg	15 kg	D	28, 36
	*		*		*	*	*		*	*			
	Nitrocellulose with alcohol *with not less than 25 percent alcohol by mass, and with not more than 12.6 percent nitrogen, by dry mass.*	4.1	UN2556	II	4.1	W31	151	212	None	1 kg	15 kg	D	28, 36
	Nitrocellulose with water *with not less than 25 percent water by mass.*	4.1	UN2555	II	4.1	W31	151	212	None	15 kg	50 kg	E	28, 36
	*		*		*	*	*		*	*			
	Nitroguanidine, wetted *or* Picrite, wetted *with not less than 20 percent water, by mass.*	4.1	UN1336	I	4.1	23, A8, A19, A20, N41, W31.	None	211	None	1 kg	15 kg	E	28, 36
	*		*		*	*	*		*	*			
	4-Nitrophenylhydrazine, *with not less than 30 percent water, by mass.*	4.1	UN3376	I	4.1	162, A8, A19, A20, N41, W31.	None	211	None	Forbidden	15 kg	E	28, 36
	*		*		*	*	*		*	*			
	Nitrostarch, wetted *with not less than 20 percent water, by mass.*	4.1	UN1337	I	4.1	23, A8, A19, A20, N41, W31.	None	211	None	1 kg	15 kg	D	28, 36
	*		*		*	*	*		*	*			
	Nonanes	3	UN1920	III	3	B1, IB3, T2, TP2	150	203	242	60 L	220 L	A.	
	*		*		*	*	*		*	*			
	Octanes	3	UN1262	II	3	IB2, T4, TP2	150	202	242	5 L	60 L	B.	
	*		*		*	*	*		*	*			
G	Organometallic substance, liquid, water-reactive.	4.3	UN3398	I	4.3	T13, TP2, TP7, TP36, TP47, W31.	None	201	244	Forbidden	1 L	D	13, 40, 52, 148
				II	4.3	IB1, IP2, T7, TP2, TP7, TP36, TP47, W31.	None	202	243	1 L	5 L	D	13, 40, 52, 148
				III	4.3	IB2, IP4, T7, TP2, TP7, TP36, TP47, W31.	None	203	242	5 L	60 L	E	13, 40, 52, 148

G	Organometallic substance, liquid, water-reactive, flammable.	4.3	UN3399	I	4.3, 3	T13, TP2, TP7, TP36, TP47, W31.	None	201	244	Forbidden	1 L	D	13, 40, 52, 148
				II	4.3, 3	IB1, IP2, T7, TP2, TP7, TP36, TP47, W31.	None	202	243	1 L	5 L	D	13, 40, 52, 148
				III	4.3, 3	IB2, IP4, T7, TP2, TP7, TP36, TP47, W31.	None	203	242	5 L	60 L	E	13, 40, 52, 148
*	*	*	*	*	*	*							
G	Organometallic substance, solid, water-reactive.	4.3	UN3395	I	4.3	N40, T9, TP7, TP33, TP36, TP47, W31.	None	211	242	Forbidden	15 kg	E	13, 40, 52, 14
				II	4.3	IB4, T3, TP33, TP36, TP47, W31.	151	212	242	15 kg	50 kg	E	13, 40, 52, 148
				III	4.3	IB6, T1, TP33, TP36, TP47, W31.	151	213	241	25 kg	100 kg	E	13, 40, 52, 148
G	Organometallic substance, solid, water-reactive, flammable.	4.3	UN3396	I	4.3, 4.1	N40, T9, TP7, TP33, TP36, TP47, W31.	None	211	242	Forbidden	15 kg	E	13, 40, 52, 148
				II	4.3, 4.1	IB4, T3, TP33, TP36, TP47, W31.	151	212	242	15 kg	50 kg	E	13, 40, 52, 148
				III	4.3, 4.1	IB6, T1, TP33, TP36, TP47, W31.	151	213	241	25 kg	100 kg	E	13, 40, 52, 148
G	Organometallic substance, solid, water-reactive, self-heating.	4.3	UN3397	I	4.3, 4.2	N40, T9, TP7, TP33, TP36, TP47, W31.	None	211	242	Forbidden	15 kg	E	13, 40, 52, 148
				II	4.3, 4.2	IB4, T3, TP33, TP36, TP47, W31.	None	212	242	15 kg	50 kg	E	13, 40, 52, 14
				III	4.3, 4.2	IB6, T1, TP33, TP36, TP47, W31.	None	213	241	25 kg	100 kg	E	13, 40, 52, 14
*	*	*	*	*	*	*							
	Osmium tetroxide	6.1	UN2471	I	6.1	A8, IB7, IP1, N33, N34, T6, TP33, W31.	None	211	242	5 kg	50 kg	B	40
*	*	*	*	*	*	*							
	Paper, unsaturated oil treated *incompletely dried (including carbon paper).*	4.2	UN1379	III	4.2	IB8, IP3, W31	None	213	241	Forbidden	Forbidden	A.	
*	*	*	*	*	*	*							
	Peroxides, inorganic, n.o.s	5.1	UN1483	II	5.1	A7, A20, IB6, IP2, N34, T3, TP33, W100.	None	212	242	5 kg	25 kg	C	13, 52, 66, 75, 148
				III	5.1	A7, A20, B134, IB8, IP4, N34, T1, TP33, W100.	152	213	240	25 kg	100 kg	C	13, 52, 66, 75, 148
*	*	*	*	*	*	*							
	9-Phosphabicyclononanes *or* Cyclooctadiene phosphines.	4.2	UN2940	II	4.2	A19, IB6, IP2, T3, TP33, W31.	None	212	241	15 kg	50 kg	A.	
*	*	*	*	*	*	*							
	Phosphorus heptasulfide, *free from yellow or white phosphorus.*	4.1	UN1339	II	4.1	A20, IB4, N34, T3, TP33, W31.	None	212	240	15 kg	50 kg	B	13, 74, 147, 148
*	*	*	*	*	*	*							
	Phosphorus pentasulfide, *free from yellow or white phosphorus.*	4.3	UN1340	II	4.3, 4.1	A20, B59, IB4, T3, TP33, W31, W40.	151	212	242	15 kg	50 kg	B	13, 74, 148
*	*	*	*	*	*	*							
	Phosphorus sesquisulfide, *free from yellow or white phosphorus.*	4.1	UN1341	II	4.1	A20, IB4, N34, T3, TP33, W31.	None	212	240	15 kg	50 kg	B	74
*	*	*	*	*	*	*							
	Phosphorus trisulfide, *free from yellow or white phosphorus.*	4.1	UN1343	II	4.1	A20, IB4, N34, T3, TP33, W31.	None	212	240	15 kg	50 kg	B	13, 74, 147, 148

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations (see §§ 173.27 and 175.75)		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Phosphorus, white dry *or* Phosphorus, white, under water *or* Phosphorus white, in solution *or* Phosphorus, yellow dry *or* Phosphorus, yellow, under water *or* Phosphorus, yellow, in solution.	4.2	UN1381	I	4.2, 6.1	B9, B26, N34, T9, TP3, TP31, W31.	None	188	243	Forbidden	Forbidden	E.	
	*		*		*	*	*		*	*			
	Pine oil	3	UN1272	III	3	B1, IB3, T2, TP2	150	203	242	60 L	220 L	A.	
	alpha-Pinene	3	UN2368	III	3	B1, IB3, T2, TP2	150	203	242	60 L	220 L	A.	
	*		*		*	*	*		*	*			
	Polyhalogenated biphenyls, liquid *or* Halogenated monomethyldiphenyl-methanes, liquid *or* Polyhalogenated terphenyls, liquid.	9	UN3151	II	9	IB2	155	204	241	100 L	220 L	A	95
	Polyhalogenated biphenyls, solid *or* Halogenated monomethyldiphenyl-methanes, solid *or* Polyhalogenated terphenyls, solid.	9	UN3152	II	9	IB8, IP2, IP4, T3, TP33	155	204	241	100 kg	200 kg	A	95
	*		*		*	*	*		*	*			
	Potassium	4.3	UN2257	I	4.3	A7, A19, A20, B27, IB4, IP1, N6, N34, T9, TP7, TP33, W32.	151	211	244	Forbidden	15 kg	D	52
	*		*		*	*	*		*	*			
	Potassium borohydride	4.3	UN1870	I	4.3	A19, N40, W32	None	211	242	Forbidden	15 kg	E	13, 52, 148
	*		*		*	*	*		*	*			
	Potassium cyanide, solid	6.1	UN1680	I	6.1	B69, B77, IB7, IP1, N74, N75, T6, TP33, W31.	None	211	242	5 kg	50 kg	B	52
	*		*		*	*	*		*	*			
	Potassium cyanide solution	6.1	UN3413	I	6.1	B69, B77, N74, N75, T14, TP2, TP13, W31.	None	201	243	1 L	30 L	B	52
				II	6.1	B69, B77, IB2, N74, N75, T11, TP2, TP13, TP27, W31.	153	202	243	5 L	60 L	B	52
				III	6.1	B69, B77, IB3, N74, N75, T7, TP2, TP13, TP28, W31.	153	203	241	60 L	220 L	A	52
	*		*		*	*	*		*	*			
	Potassium dithionite *or* Potassium hydrosulfite.	4.2	UN1929	II	4.2	A8, A19, A20, IB6, IP2, T3, TP33, W31.	None	212	241	15 kg	50 kg	E	13
	*		*		*	*	*		*	*			
	Potassium, metal alloys, liquid	4.3	UN1420	I	4.3	A7, A19, A20, B27, W31.	None	201	244	Forbidden	1 L	E	13, 40, 52, 148

	Potassium, metal alloys, solid	4.3	UN3403	I	4.3	A19, A20, B27, IB4, IP1, T9, TP7, TP33, W32.	None	211	244	Forbidden	15 kg	D	13, 52, 148
	*		*		*	*	*		*	*			
	Potassium phosphide	4.3	UN2012	I	4.3, 6.1	A19, N40, W32	None	211	None	Forbidden	15 kg	E	13, 40, 52, 85, 148
	*		*		*	*	*		*	*			
	Potassium sodium alloys, liquid	4.3	UN1422	I	4.3	A7, A19, B27, N34, N40, T9, TP3, TP7, TP31, W31.	None	201	244	Forbidden	1 L	E	13, 40, 52, 148
	Potassium sodium alloys, solid	4.3	UN3404	I	4.3	A19, B27, N34, N40, T9, TP7, TP33, W32.	None	211	244	Forbidden	15 kg	D	13, 52, 148
	Potassium sulfide, anhydrous *or* Potassium sulfide *with less than 30 percent water of crystallization.*	4.2	UN1382	II	4.2	A19, A20, B16, IB6, IP2, N34, T3, TP33, W31, W40.	None	212	241	15 kg	50 kg	A	52
	*		*		*	*	*		*	*			
	Potassium superoxide	5.1	UN2466	I	5.1	A20, IB6, IP1	None	211	None	Forbidden	15 kg	D	13, 52, 66, 75, 148
	*		*		*	*	*		*	*			
	Propadiene, stabilized	2.1	UN2200		2.1	387	None	304	314, 315	Forbidden	150 kg	B	25, 40
	*		*		*	*	*		*	*			
	Propellant, solid	1.4C	UN0501	II	1.4C		None	62	None	Forbidden	75 kg	2	25
	*		*		*	*	*		*	*			
	Propylene tetramer	3	UN2850	III	3	B1, IB3, T2, TP2	150	203	242	60 L	220 L	A.	
	*		*		*	*	*		*	*			
	Propyleneimine, stabilized	3	UN1921	I	3, 6.1	387, A3, N34, T14, TP2, TP13.	None	201	243	1 L	30 L	D	25, 40
	*		*		*	*	*		*	*			
G	Pyrophoric liquids, organic, n.o.s	4.2	UN2845	I	4.2	B11, T22, TP2, TP7, W31.	None	181	244	Forbidden	Forbidden	D	13, 78, 148
G	Pyrophoric metals, n.o.s., *or* Pyrophoric alloys, n.o.s.	4.2	UN1383	I	4.2	B11, T21, TP7, TP33, W31.	None	187	242	Forbidden	Forbidden	D	13, 148
G	Pyrophoric solid, inorganic, n.o.s	4.2	UN3200	I	4.2	T21, TP7, TP33, W31	None	187	242	Forbidden	Forbidden	D	13, 148
G	Pyrophoric solids, organic, n.o.s	4.2	UN2846	I	4.2	W31	None	187	242	Forbidden	Forbidden	D	13, 148
	*		*		*	*	*		*	*			
	Radioactive material, low specific activity (LSA–III) *non fissile or fissile excepted.*	7	UN3322		7	A56, T5, TP4, W7	421, 422, 428.	427	427			A	95, 150
	*		*		*	*	*		*	*			
	Radioactive material, uranium hexafluoride *non fissile or fissile-excepted.*	7	UN2978		7, 6.1, 8		423	420, 427	420, 427			B	40, 95, 132
	Radioactive material, uranium hexafluoride, fissile.	7	UN2977		7, 6.1, 8		453	417, 420	417, 420			B	40, 95, 132
	*		*		*	*	*		*	*			
	Rubidium	4.3	UN1423	I	4.3	22, A7, A19, IB4, IP1, N34, N40, N45, W32.	None	211	242	Forbidden	15 kg	D	13, 52, 148
	*		*		*	*	*		*	*			
G	Self-heating liquid, corrosive, inorganic, n.o.s.	4.2	UN3188	II	4.2, 8	IB2, W31	None	202	243	1 L	5 L	C.	
				III	4.2, 8	IB2, W31	None	203	241	5 L	60 L	C.	
G	Self-heating liquid, corrosive, organic, n.o.s.	4.2	UN3185	II	4.2, 8	IB2, W31	None	202	243	1 L	5 L	C.	
				III	4.2, 8	IB2, W31	None	203	241	5 L	60 L	C.	

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations (see §§ 173.27 and 175.75)		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
G	Self-heating liquid, inorganic, n.o.s	4.2	UN3186	II	4.2	IB2, W31	None	202	242	1 L	5 L	C.	
				III	4.2	IB2, W31	None	203	241	5 L	60 L	C.	
G	Self-heating liquid, organic, n.o.s.	4.2	UN3183	II	4.2	IB2, W31	None	202	242	1 L	5 L	C.	
				III	4.2	IB2, W31	None	203	241	5 L	60 L	C.	
G	Self-heating liquid, toxic, inorganic, n.o.s.	4.2	UN3187	II	4.2, 6.1	IB2, W31	None	202	243	1 L	5 L	C.	
				III	4.2, 6.1	IB2, W31	None	203	241	5 L	60 L	C.	
G	Self-heating liquid, toxic, organic, n.o.s.	4.2	UN3184	II	4.2, 6.1	IB2, W31	None	202	243	1 L	5 L	C.	
				III	4.2, 6.1	IB2, W31	None	203	241	5 L	60 L	C.	
	*	*	*	*	*	*	*						
G	Self-heating solid, inorganic, n.o.s	4.2	UN3190	II	4.2	IB6, IP2, T3, TP33, W31.	None	212	241	15 kg	50 kg	C.	
				III	4.2	IB8, IP3, T1, TP33, W31.	None	213	241	25 kg	100 kg	C.	
G	Self-heating solid, organic, n.o.s	4.2	UN3088	II	4.2	IB6, IP2, T3, TP33, W31.	None	212	241	15 kg	50 kg	C.	
				III	4.2	B116, B130, IB8, IP3, T1, TP33, W31.	None	213	241	25 kg	100 kg	C.	
	*	*	*	*	*	*	*						
	Silver picrate, wetted *with not less than 30 percent water, by mass.*	4.1	UN1347	I	4.1	23, W31	None	211	None	Forbidden	Forbidden	D	28, 36
	*	*	*	*	*	*	*						
	Sodium	4.3	UN1428	I	4.3	A7, A8, A19, A20, B9, B48, B68, IB4, IP1, N34, T9, TP7, TP33, TP46, W32.	151	211	244	Forbidden	15 kg	D	13, 52, 148
	*	*	*	*	*	*	*						
	Sodium aluminum hydride	4.3	UN2835	II	4.3	A8, A19, A20, IB4, T3, TP33, W31, W40.	151	212	242	Forbidden	50 kg	E	13, 52, 148
	*	*	*	*	*	*	*						
	Sodium borohydride	4.3	UN1426	I	4.3	N40, W32	None	211	242	Forbidden	15 kg	E	13, 52, 148
	*	*	*	*	*	*	*						
	Sodium cyanide, solid	6.1	UN1689	I	6.1	B69, B77, IB7, N74, N75, T6, TP33, W31.	None	211	242	5 kg	50 kg	B	52
	Sodium cyanide solution	6.1	UN3414	I	6.1	B69, B77, N74, N75, T14, TP2, TP13, W31.	None	201	243	1 L	30 L	B	52
				II	6.1	B69, B77, IB2, N74, N75, T11, TP2, TP13, TP27, W31.	153	202	243	5 L	60 L	B	52
				III	6.1	B69, B77, IB3, N74, N75, T7, TP2, TP13, TP28, W31.	153	203	241	60 L	220 L	A	52
	*	*	*	*	*	*	*						
	Sodium dinitro-o-cresolate, wetted *with not less than 10% water, by mass.*	4.1	UN3369	I	4.1	162, A8, A19, N41, N84, W31.	None	211	None	0.5 kg	0.5 kg	E	28, 36

	Sodium dinitro-o-cresolate, wetted *with not less than 15 percent water, by mass.*	4.1	UN1348	I	4.1, 6.1	23, A8, A19, A20, N41, W31.	None	211	None	1 kg	15 kg	E	28, 36
	Sodium dithionite *or* Sodium hydrosulfite.	4.2	UN1384	II	4.2	A19, A20, IB6, IP2, T3, TP33, W31.	None	212	241	15 kg	50 kg	E	13
	*	*		*		*	*		*	*			
	Sodium hydride	4.3	UN1427	I	4.3	A19, N40, W32	None	211	242	Forbidden	15 kg	E	13, 52, 148
	*	*		*		*	*		*	*			
	Sodium hydrosulfide, *with less than 25 percent water of crystallization.*	4.2	UN2318	II	4.2	A7, A19, A20, IB6, IP2, T3, TP33, W31.	None	212	241	15 kg	50 kg	A	52
	*	*		*		*	*		*	*			
	Sodium methylate	4.2	UN1431	II	4.2, 8	A7, A19, IB5, IP2, T3, TP33, W31.	None	212	242	15 kg	50 kg	B.	
	*	*		*		*	*		*	*			
	Sodium phosphide	4.3	UN1432	I	4.3, 6.1	A19, N40, W32	None	211	None	Forbidden	15 kg	E	13, 40, 52, 85, 148
	*	*		*		*	*		*	*			
	Sodium picramate, *wetted with not less than 20 percent water, by mass.*	4.1	UN1349	I	4.1	23, A8, A19, N41, W31	None	211	None	Forbidden	15 kg	E	28, 36
	*	*		*		*	*		*	*			
	Sodium sulfide, anhydrous *or* Sodium sulfide *with less than 30 percent water of crystallization.*	4.2	UN1385	II	4.2	A19, A20, IB6, IP2, N34, T3, TP33, W31, W40.	None	212	241	15 kg	50 kg	A	52
	*	*		*		*	*		*	*			
	Stannic phosphide	4.3	UN1433	I	4.3, 6.1	A19, N40, W32	None	211	242	Forbidden	15 kg	E	13, 40, 52, 85, 148
	*	*		*		*	*		*	*			
	Strontium peroxide	5.1	UN1509	II	5.1	IB6, IP2, T3, TP33, W100.	152	212	242	5 kg	25 kg	C	13, 52, 66, 75, 148
	Strontium phosphide	4.3	UN2013	I	4.3, 6.1	A19, N40, W32	None	211	None	Forbidden	15 kg	E	13, 40, 52, 85, 148
	*	*		*		*	*		*	*			
	Styrene monomer, stabilized	3	UN2055	III	3	387, B1, IB3, T2, TP1	150	203	242	60 L	220 L	C	25
	*	*		*		*	*		*	*			
+	Sulfur trioxide, stabilized	8	UN1829	I	8, 6.1	2, 387, B9, B14, B32, B49, B77, N34, T20, TP4, TP13, TP25, TP26, TP38, TP45.	None	227	244	Forbidden	Forbidden	A	25, 40
	*	*		*		*	*		*	*			
G	Tear gas substances, liquid, n.o.s	6.1	UN1693	I II	6.1 6.1	W31 IB2, W31	None None	201 202	None None	Forbidden Forbidden	Forbidden 5 L	D D	40 40
G	Tear gas substance, solid, n.o.s	6.1	UN3448	I II	6.1 6.1	T6, TP33, W31 IB8, IP2, IP4, T3, TP33, W31.	None None	211 212	242 242	Forbidden Forbidden	Forbidden 25 kg	D D	40 40
	*	*		*		*	*		*	*			
	Tetrafluoroethylene, stabilized	2.1	UN1081		2.1	387	306	304	None	Forbidden	150 kg	E	25, 40
	*	*		*		*	*		*	*			
	4-Thiapentanal	6.1	UN2785	III	6.1	IB3, T4, TP1, W31	153	203	241	60 L	220 L	D	25, 49
	*	*		*		*	*		*	*			
	Thiourea dioxide	4.2	UN3341	II	4.2	IB6, IP2, T3, TP33, W31.	None	212	241	15 kg	50 kg	D.	

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Non-bulk	Bulk	(9) Quantity limitations (see §§ 173.27 and 175.75) Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
				III	4.2	IB8, IP3, T1, TP33, W31.	None	213	241	25 kg	100 kg	D.	
	*		*		*	*	*		*	*			
	Titanium disulphide	4.2	UN3174	III	4.2	IB8, IP3, T1, TP33, W31.	None	213	241	25 kg	100 kg	A.	
	Titanium hydride	4.1	UN1871	II	4.1	A19, A20, IB4, N34, T3, TP33, W31, W40.	None	212	241	15 kg	50 kg	E.	
	Titanium powder, dry	4.2	UN2546	I	4.2	W31	None	211	242	Forbidden	Forbidden	D	13, 148
				II	4.2	A19, A20, IB6, IP2, N5, N34, T3, TP33, W31.	None	212	241	15 kg	50 kg	D	13, 148
				III	4.2	B135, IB8, IP4, T1, TP33, W31.	None	213	241	25 kg	100 kg	D	13, 148
	Titanium powder, wetted *with not less than 25 percent water (a visible excess of water must be present) (a) mechanically produced, particle size less than 53 microns; (b) chemically produced, particle size less than 840 microns.*	4.1	UN1352	II	4.1	A19, A20, IB6, IP2, N34, T3, TP33, W31, W40.	None	212	240	15 kg	50 kg	E	74
	Titanium sponge granules *or* Titanium sponge powders.	4.1	UN2878	III	4.1	A1, B134, IB8, IP4, T1, TP33, W100.	None	213	240	25 kg	100 kg	D	13, 74, 147, 148
	*		*		*	*	*		*	*			
	Titanium trichloride, pyrophoric *or* Titanium trichloride mixtures, pyrophoric.	4.2	UN2441	I	4.2, 8	N34, W31	None	181	244	Forbidden	Forbidden	D	13, 40, 148
	*		*		*	*	*		*	*			
G	Toxic by inhalation liquid, water-reactive, flammable, n.o.s. *with an LC50 lower than or equal to 200 ml/m3 and saturated vapor concentration greater than or equal to 500 LC50.*	6.1	UN3490	I	6.1, 4.3, 3.	1, B9, B14, B30, T22, TP2, TP13, TP27, TP38, TP44.	None	226	244	Forbidden	Forbidden	D	13, 21, 40, 49, 148
	*		*		*	*	*		*	*			
G	Toxic solids, water-reactive, n.o.s	6.1	UN3125	I	6.1, 4.3	A5, T6, TP33, W100	None	211	242	5 kg	15 kg	D	13, 40, 148
	*		*		*	*	*		*	*			
	Trichlorosilane	4.3	UN1295	I	4.3, 3, 8	N34, T14, TP2, TP7, TP13, W31.	None	201	244	Forbidden	Forbidden	D	21, 40, 49, 100
	*		*		*	*	*		*	*			
	Trifluorochloroethylene, stabilized *or* Refrigerant gas R 1113.	2.3	UN1082		2.3, 2.1	3, 387, B14, T50	None	304	314, 315	Forbidden	Forbidden	D	25, 40
	*		*		*	*	*		*	*			
	1,3,5-Trimethylbenzene	3	UN2325	III	3	B1, IB3, T2, TP2	150	203	242	60 L	220 L	A.	
	*		*		*	*	*		*	*			
	Trinitrobenzene, wetted, *with not less than 10% water, by mass.*	4.1	UN3367	I	4.1	162, A8, A19, N41, N84, W31.	None	211	None	0.5 kg	0.5 kg	E	28, 3

Trinitrobenzene, wetted *with not less than 30 percent water, by mass.*	4.1	UN1354	I	4.1	23, A2, A8, A19, N41, W31.	None	211	None	0.5 kg	0.5 kg	E	28, 36
*		*		*	*	*		*	*			
Trinitrobenzoic acid, wetted *with not less than 10% water by mass.*	4.1	UN3368	I	4.1	162, A8, A19, N41, N84, W31.	None	211	None	0.5 kg	0.5 kg	E	28, 36
Trinitrobenzoic acid, wetted *with not less than 30 percent water, by mass.*	4.1	UN1355	I	4.1	23, A2, A8, A19, N41, W31.	None	211	None	0.5 kg	0.5 kg	E	28, 36
*		*		*	*	*		*	*			
Trinitrochlorobenzene (picryl chloride), wetted, *with not less than 10% water by mass.*	4.1	UN3365	I	4.1	162, A8, A19, N41, N84, W31.	None	211	None	0.5 kg	0.5 kg	E	28, 36
*		*		*	*	*		*	*			
Trinitrophenol (picric acid), wetted, *with not less than 10 percent water by mass.*	4.1	UN3364	I	4.1	23, A8, A19, N41, N84, W31.	None	211	None	0.5 kg	0.5 kg	E	28, 36
*		*		*	*	*		*	*			
Trinitrophenol, wetted *with not less than 30 percent water, by mass.*	4.1	UN1344	I	4.1	162, A8, A19, N41, W31.	None	211	None	1 kg	15 kg	E	28, 36
*		*		*	*	*		*	*			
Trinitrotoluene (TNT), wetted, *with not less than 10 percent water by mass.*	4.1	UN3366	I	4.1	162, A8, A19, N41, N84, W31.	None	211	None	0.5 kg	0.5 kg	E	28, 36
Trinitrotoluene, wetted *or* TNT, wetted, *with not less than 30 percent water by mass.*	4.1	UN1356	I	4.1	23, A2, A8, A19, N41, W31.	None	211	None	0.5 kg	0.5 kg	E	28, 36
*		*		*	*	*		*	*			
Tripropylene	3	UN2057	II III	3 3	IB2, T4, TP2 B1, IB3, T2, TP2	150 150	202 203	242 242	5 L 60 L	60 L 220 L	B. A.	
*		*		*	*	*		*	*			
Turpentine	3	UN1299	III	3	B1, IB3, T2, TP2	150	203	242	60 L	220 L	A.	
*		*		*	*	*		*	*			
Uranium hexafluoride, radioactive material, excepted package, *less than 0.1 kg per package, non-fissile or fissile-excepted.*	6.1	UN3507	I	6.1, 7, 8	369	420	None	None	Less than .1 kg.	Less than .1 kg.	A	132
*		*		*	*	*		*	*			
Urea nitrate, wetted, *with not less than 10 percent water by mass.*	4.1	UN3370	I	4.1	162, A8, A19, N41, N84, W31.	None	211	None	0.5 kg	0.5 kg	E	28, 36
Urea nitrate, wetted *with not less than 20 percent water, by mass.*	4.1	UN1357	I	4.1	23, 39, A8, A19, N41, W31.	None	211	None	1 kg	15 kg	E	28, 36
*		*		*	*	*		*	*			
Vinyl acetate, stabilized	3	UN1301	II	3	387, IB2, T4, TP1	150	202	242	5 L	60 L	C	25
Vinyl bromide, stabilized	2.1	UN1085		2.1	387, N86, T50	306	304	314, 315	Forbidden	150 kg	C	25, 40
Vinyl butyrate, stabilized	3	UN2838	II	3	387, IB2, T4, TP1	150	202	242	5 L	60 L	C	25
Vinyl chloride, stabilized	2.1	UN1086		2.1	21, 387, B44, N86, T50.	306	304	314, 315	Forbidden	150 kg	B	25, 40
Vinyl ethyl ether, stabilized	3	UN1302	I	3	387, A3, T11, TP2	None	201	243	1 L	30 L	D	25
Vinyl fluoride, stabilized	2.1	UN1860		2.1	387, N86	306	304	314, 315	Forbidden	150 kg	E	25, 40
Vinyl isobutyl ether, stabilized	3	UN1304	II	3	387, IB2, T4, TP1	150	202	242	5 L	60 L	C	25
Vinyl methyl ether, stabilized	2.1	UN1087		2.1	387, B44, T50	306	304	314, 315	Forbidden	150 kg	B	25, 40
*		*		*	*	*		*	*			
Vinylidene chloride, stabilized	3	UN1303	I	3	387, T12, TP2, TP7	150	201	243	1 L	30 L	D	25, 40

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations (see §§ 173.27 and 175.75)		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Vinylpyridines, stabilized	6.1	UN3073	II	6.1, 3, 8	387, IB1, T7, TP2, TP13.	153	202	243	1 L	30 L	B	21, 25, 40, 52, 100
	Vinyltoluenes, stabilized	3	UN2618	III	3	387, B1, IB3, T2, TP1	150	203	242	60 L	220 L	C	25
	*		*		*	*	*		*	*			
G	Water-reactive liquid, n.o.s	4.3	UN3148	I	4.3	T13, TP2, TP7, TP41, W31.	None	201	244	Forbidden	1 L	E	13, 40, 148
				II	4.3	IB1, T7, TP2, TP7, W31.	None	202	243	1 L	5 L	E	13, 40, 148
				III	4.3	IB2, T7, TP2, TP7, W31.	None	203	242	5 L	60 L	E	13, 40, 148
	*		*		*	*	*		*	*			
G	Water-reactive solid, corrosive, n.o.s.	4.3	UN3131	I	4.3, 8	IB4, IP1, N40, T9, TP7, TP33, W31.	None	211	242	Forbidden	15 kg	D	13, 148
				II	4.3, 8	IB6, IP2, T3, TP33, W31, W40.	151	212	242	15 kg	50 kg	E	13, 85, 148
				III	4.3, 8	IB8, IP4, T1, TP33, W31.	151	213	241	25 kg	100 kg	E	13, 85, 148
G	Water-reactive solid, flammable, n.o.s.	4.3	UN3132	I	4.3, 4.1	IB4, N40, W31	None	211	242	Forbidden	15 kg	D	13, 148
				II	4.3, 4.1	IB4, T3, TP33, W31, W40.	151	212	242	15 kg	50 kg	E	13, 148
				III	4.3, 4.1	IB6, T1, TP33, W31	151	213	241	25 kg	100 kg	E	13, 148
G	Water-reactive solid, n.o.s	4.3	UN2813	I	4.3	IB4, N40, T9, TP7, TP33, W32.	None	211	242	Forbidden	15 kg	E	13, 40, 148
				II	4.3	B132, IB7, IP2, IP4, T3, TP33, W31, W40.	151	212	242	15 kg	50 kg	E	13, 40, 148
				III	4.3	B132, IB8, IP4, T1, TP33, W31.	151	213	241	25 kg	100 kg	E	13, 40, 148
	*		*		*	*	*		*	*			
G	Water-reactive solid, self-heating, n.o.s.	4.3	UN3135	I	4.3, 4.2	N40, W31	None	211	242	Forbidden	15 kg	E	13, 148
				II	4.3, 4.2	IB5, IP2, T3, TP33, W31, W40.	None	212	242	15 kg	50 kg	E	13, 148
				III	4.3, 4.2	IB8, IP4, T1, TP33, W31.	None	213	241	25 kg	100 kg	E	13, 148
G	Water-reactive solid, toxic, n.o.s	4.3	UN3134	I	4.3, 6.1	A8, IB4, IP1, N40, W31.	None	211	242	Forbidden	15 kg	D	13, 148
				II	4.3, 6.1	IB5, IP2, T3, TP33, W31, W40.	151	212	242	15 kg	50 kg	E	13, 85, 148
				III	4.3, 6.1	IB8, IP4, T1, TP33, W31.	151	213	241	25 kg	100 kg	E	13, 85, 148
	*		*		*	*	*		*	*			
	Xanthates	4.2	UN3342	II	4.2	IB6, IP2, T3, TP33, W31.	None	212	241	15 kg	50 kg	D	40
				III	4.2	IB8, IP3, T1, TP33, W31.	None	213	241	25 kg	100 kg	D	40
	*		*		*	*	*		*	*			
	Xylyl bromide, liquid	6.1	UN1701	II	6.1	A3, A6, A7, IB2, N33, T7, TP2, TP13, W31.	None	340	None	Forbidden	60 L	D	40

*		*		*	*	*	*	*				
Zinc ashes	4.3	UN1435	III	4.3	A1, A19, IB8, IP4, T1, TP33, W100.	151	213	241	25 kg	100 kg	A	13, 148
*		*		*	*	*	*	*				
Zinc chloride, solution	8	UN1840	III	8	IB3, T4, TP2	154	203	241	5 L	60 L	A.	
*		*		*	*	*	*	*				
Zinc peroxide	5.1	UN1516	II	5.1	IB6, IP2, T3, TP33, W100.	152	212	242	5 kg	25 kg	C	13, 52, 66, 75, 148
Zinc phosphide	4.3	UN1714	I	4.3, 6.1	A19, N40, W32	None	211	None	Forbidden	15 kg	E	13, 40, 52, 85, 148
Zinc powder *or* Zinc dust	4.3	UN1436	I	4.3, 4.2	A19, IB4, IP1, N40, W31.	None	211	242	Forbidden	15 kg	A	13, 52, 53, 148
			II	4.3, 4.2	A19, IB7, IP2, T3, TP33, W31, W40.	None	212	242	15 kg	50 kg	A	13, 52, 53, 148
			III	4.3, 4.2	IB8, IP4, T1, TP33, W31.	None	213	242	25 kg	100 kg	A	13, 52, 53, 148
Zirconium hydride	4.1	UN1437	II	4.1	A19, A20, IB4, N34, T3, TP33, W31, W40.	None	212	240	15 kg	50 kg	E.	
*		*		*	*	*	*	*				
Zirconium, dry, *coiled wire, finished metal sheets, strip (thinner than 254 microns but not thinner than 18 microns).*	4.1	UN2858	III	4.1	A1, W100	151	213	240	25 kg	100 kg	A	13, 147, 148
Zirconium, dry, *finished sheets, strip or coiled wire.*	4.2	UN2009	III	4.2	A1, A19, W31	None	213	240	25 kg	100 kg	D	13, 148
*		*		*	*	*	*	*				
Zirconium picramate, wetted *with not less than 20 percent water, by mass.*	4.1	UN1517	I	4.1	23, N41, W31	None	211	None	1 kg	15 kg	D	28, 36
Zirconium powder, dry	4.2	UN2008	I	4.2	T21, TP7, TP33, W31	None	211	242	Forbidden	Forbidden	D	13, 148
			II	4.2	A19, A20, IB6, IP2, N5, N34, T3, TP33, W31.	None	212	241	15 kg	50 kg	D	13, 148
			III	4.2	B135, IB8, IP4, T1, TP33, W31.	None	213	241	25 kg	100 kg	D	13, 148
Zirconium powder, wetted *with not less than 25 percent water (a visible excess of water must be present) (a) mechanically produced, particle size less than 53 microns; (b) chemically produced, particle size less than 840 microns.*	4.1	UN1358	II	4.1	A19, A20, IB6, IP2, N34, T3, TP33, W31, W40.	None	212	241	15 kg	50 kg	E	13, 74, 147, 148
Zirconium scrap	4.2	UN1932	III	4.2	B135, IB8, IP4, N34, T1, TP33, W31.	None	213	240	Forbidden	Forbidden	D	13, 148

* * * * *

■ 13. In Appendix B to § 172.101, the List of Marine Pollutants is amended by adding six (6) entries in appropriate alphabetical order to read as follows:

Appendix B to § 172.101—List of Marine Pollutants

* * * * *

LIST OF MARINE POLLUTANTS

S.M.P. (1)	Marine pollutant (2)
* *	* * *
	Hexanes.
* *	* * *
	Hypochlorite solutions.
* *	* * *
	Isoprene, stabilized.
* *	* * *
	N-Methylaniline.
* *	* * *
	Methylcyclohexane.
* *	* * *
	Tripropylene.
* *	* * *

■ 14. In § 172.102:

■ a. In paragraph (c)(1):

■ 1. Revise special provisions 40, 134, and 135;

■ 2. Add special provisions 157, 181, and 182;

■ 3. Revise special provisions 238 and 369; and

■ 4. Add special provisions, 379, 387, and 422.

■ b. In paragraph (c)(2), special provisions A210 and A212 are added.

■ c. In paragraph (c)(3), special provisions B134 and B135 are added.

■ d. In paragraph (c)(4), Table 2—IP Codes is revised.

■ e. In paragraph (c)(5), special provision N90 is revised and N92 is added.

■ e. In paragraph (c)(9), special provisions W31, W32, W40, and W100 are added.

The additions and revisions read as follows:

§ 172.102 Special Provisions.

* * * * *

(c) * * *

(1) * * *

40 Polyester resin kits consist of two components: A base material (either Class 3 or Division 4.1, Packing Group II or III) and an activator (organic peroxide), each separately packed in an inner packaging. The organic peroxide must be type D, E, or F, not requiring temperature control. The components may be placed in the same outer packaging provided they will not interact dangerously in the event of leakage. The Packing Group assigned will be II or III, according to the classification criteria for either Class 3 or Division 4.1, as appropriate, applied to the base material. Additionally, unless otherwise excepted in this subchapter, polyester resin kits must be packaged in specification combination packagings based on the performance level of the base material contained within the kit.

* * * * *

134 This entry only applies to vehicles powered by wet batteries, sodium batteries, lithium metal batteries or lithium ion batteries and equipment powered by wet batteries or sodium batteries that are transported with these batteries installed.

a. For the purpose of this special provision, vehicles are self-propelled apparatus designed to carry one or more persons or goods. Examples of such vehicles are electrically-powered cars, motorcycles, scooters, three- and four-wheeled vehicles or motorcycles, trucks, locomotives, bicycles (pedal cycles with an electric motor) and other vehicles of this type (*e.g.* self-balancing vehicles or vehicles not equipped with at least one seating position), lawn tractors, self-propelled farming and construction equipment, boats, aircraft, wheelchairs and other mobility aids. This includes vehicles transported in a packaging. In this case some parts of the vehicle may be detached from its frame to fit into the packaging.

b. Examples of equipment are lawnmowers, cleaning machines or model boats and model aircraft. Equipment powered by lithium metal batteries or lithium ion batteries must be consigned under the entries "Lithium metal batteries contained in equipment" or "Lithium metal batteries packed with equipment" or "Lithium ion batteries contained in equipment" or "Lithium ion batteries packed with equipment" as appropriate.

c. Self-propelled vehicles or equipment that also contain an internal combustion engine must be consigned under the entries "Engine, internal combustion, flammable gas powered" or "Engine, internal combustion, flammable liquid powered" or "Vehicle, flammable gas powered" or "Vehicle, flammable liquid powered," as appropriate. These entries include hybrid electric vehicles powered by both an internal combustion engine and batteries. Additionally, self-propelled vehicles or equipment that contain a fuel cell engine must be consigned under the entries "Engine, fuel cell, flammable gas powered" or "Engine, fuel cell, flammable liquid powered" or "Vehicle, fuel cell, flammable gas powered" or "Vehicle, fuel cell, flammable liquid powered," as appropriate. These entries include hybrid electric vehicles powered by a fuel cell engine, an internal combustion engine, and batteries.

135 Internal combustion engines installed in a vehicle must be consigned under the entries "Vehicle, flammable gas powered" or "Vehicle, flammable liquid powered," as appropriate. If a vehicle is powered by a flammable liquid and a flammable gas internal combustion engine, it must be consigned under the entry "Vehicle, flammable gas powered." These entries include hybrid electric vehicles powered by both an internal combustion engine and wet, sodium or lithium batteries installed. If a fuel cell engine is installed in a vehicle, the vehicle must be consigned using the entries "Vehicle, fuel cell, flammable gas powered" or "Vehicle, fuel cell, flammable liquid powered," as appropriate. These entries include hybrid electric vehicles powered by a fuel cell, an internal combustion engine, and wet, sodium or lithium batteries installed. For the purpose of this special provision, vehicles are self-propelled apparatus designed to carry one or more persons or goods. Examples of such vehicles are cars, motorcycles, trucks, locomotives, scooters, three- and four-wheeled vehicles or motorcycles, lawn tractors, self-propelled farming and construction equipment, boats and aircraft.

* * * * *

157 When transported as a limited quantity or a consumer commodity, the maximum net capacity specified in § 173.151(b)(1)(i) of this subchapter for inner packagings may be increased to 5 kg (11 pounds).

* * * * *

181 When a package contains a combination of lithium batteries contained in equipment and lithium batteries packed with equipment, the following requirements apply:

a. The shipper must ensure that all applicable requirements of § 173.185 are met. The total mass of lithium batteries contained in any package must not exceed the quantity limits in columns 9A and 9B for passenger aircraft or cargo aircraft, as applicable;

b. except as provided in § 173.185(c)(3), the package must be marked "UN 3091 Lithium metal batteries packed with equipment", or "UN 3481 Lithium ion batteries packed with equipment," as appropriate. If a package contains both lithium metal batteries and lithium ion batteries packed with and contained in equipment, the package must be marked as required for both battery types. However, button cell batteries installed in equipment (including circuit boards) need not be considered; and

c. the shipping paper must indicate "UN 3091 Lithium metal batteries packed with equipment" or "UN 3481 Lithium ion batteries packed with equipment," as appropriate. If a package contains both lithium metal batteries and lithium ion batteries packed with and contained in equipment, then the shipping paper must indicate both "UN 3091 Lithium metal batteries packed with equipment" and "UN 3481 Lithium ion batteries packed with equipment."

182 Equipment containing only lithium batteries must be classified as either UN 3091 or UN 3481.

* * * * *

238 Neutron radiation detectors: a. Neutron radiation detectors containing non-pressurized boron trifluoride gas in excess of 1 gram (0.035 ounces) and radiation detection systems containing such neutron radiation detectors as components may be transported by highway, rail, vessel, or cargo aircraft in accordance with the following:

a. Each radiation detector must meet the following conditions:

(1) The pressure in each neutron radiation detector must not exceed 105 kPa absolute at 20 °C (68 °F);

(2) The amount of gas must not exceed 13 grams (0.45 ounces) per detector; and

(3) Each neutron radiation detector must be of welded metal construction with brazed metal to ceramic feed through assemblies. These detectors must have a minimum burst pressure of 1800 kPa as demonstrated by design type qualification testing; and

(4) Each detector must be tested to a 1×10^{-10} cm^3/s leaktightness standard before filling.

b. Radiation detectors transported as individual components must be transported as follows:

(1) They must be packed in a sealed intermediate plastic liner with sufficient absorbent or adsorbent material to absorb or adsorb the entire gas contents.

(2) They must be packed in strong outer packagings and the completed package must be capable of withstanding a 1.8 meter (5.9 feet) drop without leakage of gas contents from detectors.

(3) The total amount of gas from all detectors per outer packaging must not exceed 52 grams (1.83 ounces).

c. Completed neutron radiation detection systems containing detectors meeting the conditions of paragraph a(1) of this special provision must be transported as follows:

(1) The detectors must be contained in a strong sealed outer casing;

(2) The casing must contain include sufficient absorbent or adsorbent material to absorb or adsorb the entire gas contents;

(3) The completed system must be packed in strong outer packagings capable of withstanding a 1.8 meter (5.9 feet) drop test without leakage unless a system's outer casing affords equivalent protection.

d. Except for transportation by aircraft, neutron radiation detectors and radiation detection systems containing such detectors transported in accordance with paragraph a. of this special provision are not subject to the labeling and placarding requirements of part 172 of this subchapter.

e. When transported by highway, rail, vessel, or as cargo on an aircraft, neutron radiation detectors containing not more than 1 gram of boron trifluoride, including those with solder glass joints are not subject to any other requirements of this subchapter provided they meet the requirements in paragraph a(1) of this special provision and are packed in accordance with paragraph a(2) of this special provision. Radiation detection systems containing such detectors are not subject to any other requirements of this subchapter provided they are packed in accordance with paragraph a(3) of this special provision.

* * * * *

369 In accordance with § 173.2a, this radioactive material in an excepted package possessing corrosive properties is classified in Division 6.1 with a radioactive material and corrosive subsidiary risk. Uranium hexafluoride may be classified under this entry only if the conditions of §§ 173.420(a)(4) and (6), 173.420(d), 173.421(b) and (d), and, for fissile-excepted material, the conditions of 173.453 of this subchapter are met. In addition to the provisions applicable to the transport of Division 6.1 substances, the provisions of §§ 173.421(c), and 173.443(a) of this subchapter apply. In addition, packages shall be legibly and durably marked with an identification of the consignor, the consignee, or both. No Class 7 label is required to be displayed. The consignor shall be in possession of a copy of each applicable certificate when packages include fissile material excepted by competent authority approval. When a consignment is undeliverable, the consignment shall be placed in a safe location and the appropriate competent authority shall be informed as soon as possible and a request made for instructions on further action. If it is evident that a package of radioactive material, or conveyance carrying unpackaged radioactive material, is leaking, or if it is suspected that the package, or conveyance carrying unpackaged material, may have leaked, the requirements of § 173.443(e) of this subchapter apply.

* * * * *

379 When offered for transport by highway, rail, or cargo vessel, anhydrous ammonia adsorbed or absorbed on a solid contained in ammonia dispensing systems or receptacles intended to form part of such systems is not subject to the requirements of this subchapter if the following conditions in this provision are met. In addition to meeting the conditions in this provision, transport on cargo aircraft only may be authorized with prior approval of the Associate Administrator.

a. The adsorption or absorption presents the following properties:

(1) The pressure at a temperature of 20 °C (68 °F) in the receptacle is less than 0.6 bar (60 kPa);

(2) The pressure at a temperature of 35 °C (95 °F) in the receptacle is less than 1 bar (100 kPa);

(3) The pressure at a temperature of 85 °C (185 °F) in the receptacle is less than 12 bar (1200 kPa).

b. The adsorbent or absorbent material shall not meet the definition or criteria for inclusion in Classes 1 to 8;

c. The maximum contents of a receptacle shall be 10 kg of ammonia; and

d. Receptacles containing adsorbed or absorbed ammonia shall meet the following conditions:

(1) Receptacles shall be made of a material compatible with ammonia as specified in ISO 11114–1:2012 (IBR, see § 171.7 of this subchapter);

(2) Receptacles and their means of closure shall be hermetically sealed and able to contain the generated ammonia;

(3) Each receptacle shall be able to withstand the pressure generated at 85 °C (185 °F) with a volumetric expansion no greater than 0.1%;

(4) Each receptacle shall be fitted with a device that allows for gas evacuation once pressure exceeds 15 bar (1500 kPa) without violent rupture, explosion or projection; and

(5) Each receptacle shall be able to withstand a pressure of 20 bar (2000

kPa) without leakage when the pressure relief device is deactivated.

e. When offered for transport in an ammonia dispenser, the receptacles shall be connected to the dispenser in such a way that the assembly is guaranteed to have the same strength as a single receptacle.

f. The properties of mechanical strength mentioned in this special provision shall be tested using a prototype of a receptacle and/or dispenser filled to nominal capacity, by increasing the temperature until the specified pressures are reached.

g. The test results shall be documented, shall be traceable, and shall be made available to a representative of the Department upon request.

* * * * *

387 When materials are stabilized by temperature control, the provisions of § 173.21(f) apply. When chemical stabilization is employed, the person offering the material for transport shall ensure that the level of stabilization is sufficient to prevent the material as packaged from dangerous polymerization at 50 °C (122 °F). If chemical stabilization becomes ineffective at lower temperatures within the anticipated duration of transport, temperature control is required and is forbidden by aircraft. In making this determination factors to be taken into consideration include, but are not limited to, the capacity and geometry of the packaging and the effect of any insulation present, the temperature of the material when offered for transport, the duration of the journey, and the ambient temperature conditions typically encountered in the journey (considering also the season of year), the effectiveness and other properties of the stabilizer employed, applicable operational controls imposed by regulation (*e.g.*, requirements to protect from sources of heat, including other cargo carried at a temperature above ambient) and any other relevant factors.

* * * * *

422 When labelling is required, the label to be used must be the label shown in § 172.447. Labels conforming to requirements in place on December 31, 2016 may continue to be used until December 31, 2018. When a placard is displayed, the placard must be the placard shown in § 172.560.

* * * * *

(2) * * *

A210 This substance is forbidden for transport by air. It may be transported on cargo aircraft only with the prior approval of the Associate Administrator.

* * * * *

A212 "UN 2031, Nitric acid, *other than red fuming, with more than 20% and less than 65% nitric acid*" intended for use in sterilization devices only, may be transported on passenger aircraft irrespective of the indication of "forbidden" in columns (9A) of the § 172.101 table provided that:

a. Each inner packaging contains not more than 30 mL;

b. Each inner packaging is contained in a sealed leak-proof intermediate packaging with sufficient absorbent material capable of containing the contents of the inner packaging;

c. Intermediate packagings are securely packed in an outer packaging of a type permitted by § 173.158(g) which meet the requirements of part 178 of the HMR at the Packing Group I performance level;

d. The maximum quantity of nitric acid in the package does not exceed 300 mL; and

e. Transport in accordance with this special provision must be noted on the shipping paper.

* * * * *

(3) * * *

B134 For Large Packagings offered for transport by vessel, flexible or fibre inner packagings shall be sift-proof and water-resistant or shall be fitted with a sift-proof and water-resistant liner.

B135 For Large Packagings offered for transport by vessel, flexible or fibre inner packagings shall be hermetically sealed.

* * * * *

(4) * * *

TABLE 2—IP CODES

IP code	
IP1	IBCs must be packed in closed freight containers or a closed transport vehicle.
IP2	When IBCs other than metal or rigid plastics IBCs are used, they must be offered for transportation in a closed freight container or a closed transport vehicle.
IP3	Flexible IBCs must be sift-proof and water-resistant or must be fitted with a sift-proof and water-resistant liner.
IP4	Flexible, fiberboard or wooden IBCs must be sift-proof and water-resistant or be fitted with a sift-proof and water-resistant liner.
IP5	IBCs must have a device to allow venting. The inlet to the venting device must be located in the vapor space of the IBC under maximum filling conditions.
IP6	Non-specification bulk bins are authorized.
IP7	For UN identification numbers 1327, 1363, 1364, 1365, 1386, 1841, 2211, 2217, 2793 and 3314, IBCs are not required to meet the IBC performance tests specified in part 178, subpart N of this subchapter.
IP8	Ammonia solutions may be transported in rigid or composite plastic IBCs (31H1, 31H2 and 31HZ1) that have successfully passed, without leakage or permanent deformation, the hydrostatic test specified in § 178.814 of this subchapter at a test pressure that is not less than 1.5 times the vapor pressure of the contents at 55 °C (131 °F).
IP13	Transportation by vessel in IBCs is prohibited.
IP14	Air must be eliminated from the vapor space by nitrogen or other means.
IP15	For UN2031 with more than 55% nitric acid, rigid plastic IBCs and composite IBCs with a rigid plastic inner receptacle are authorized for two years from the date of IBC manufacture.
IP16	IBCs of type 31A and 31N are only authorized if approved by the Associate Administrator.
IP19	For UN identification numbers 3531, 3532, 3533, and 3534, IBCs must be designed and constructed to permit the release of gas or vapor to prevent a build-up of pressure that could rupture the IBCs in the event of loss of stabilization.
IP20	Dry sodium cyanide or potassium cyanide is also permitted in siftproof, water-resistant, fiberboard IBCs when transported in closed freight containers or transport vehicles.

* * * * *

(5) * * *

N90 Metal packagings are not authorized. Packagings of other material with a small amount of metal, for example metal closures or other metal fittings such as those mentioned in part 178 of this subchapter, are not considered metal packagings. Packagings of other material constructed with a small amount of metal must be designed such that the hazardous material does not contact the metal.

* * * * *

N92 Notwithstanding the provisions of § 173.24(g), packagings shall be designed and constructed to permit the release of gas or vapor to prevent a build-up of pressure that could rupture the packagings in the event of loss of stabilization.

* * * * *

(9) * * *

W31 Packagings must be hermetically sealed.

W32 Packagings shall be hermetically sealed, except for solid fused material.

W40 Bags are not allowed.

* * * * *

W100 Flexible, fibreboard or wooden packagings must be sift-proof and water-resistant or must be fitted with a sift-proof and water-resistant liner.

* * * * *

■ 15. In § 172.407, paragraphs (c)(1)(i) and (iii) are revised to read as follows:

§ 172.407 Label specifications.

* * * * *

(c) * * *

(1) * * *

(i) If the size of the package so requires, the dimensions of the label and its features may be reduced proportionally provided the symbol and other elements of the label remain clearly visible.

* * * * *

(iii) *Transitional exception*—For domestic transportation, a label in conformance with the requirements of this paragraph in effect on December 31, 2014, may continue to be used until December 31, 2018.

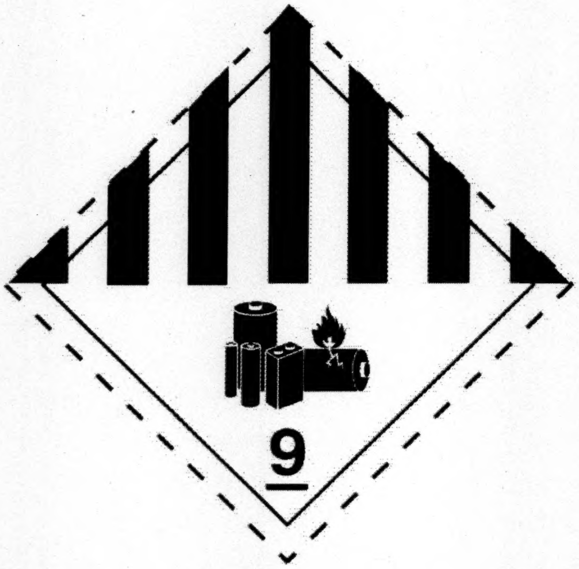
* * * * *

■ 16. Section 172.447 is added to read as follows:

§ 172.447 LITHIUM BATTERY label.

(a) Except for size and color, the LITHIUM BATTERY label must be as follows:

BILLING CODE 4910–60–P



(b) In addition to complying with § 172.407, the background on the LITHIUM BATTERY label must be white with seven black vertical stripes on the top half. The black vertical stripes must be spaced, so that, visually, they appear equal in width to the six white spaces between them. The lower half of the label must be white with the symbol (battery group, one broken and emitting flame) and class number "9" underlined and centered at the bottom in black.

(c) Labels conforming to requirements in place on December 31, 2016 may continue to be used until December 31, 2018.

■ 17. In § 172.505, paragraph (b) is revised to read as follows:

§ 172.505 Placarding for subsidiary hazards.

* * * * *

(b) In addition to the RADIOACTIVE placard which may be required by § 172.504(e), each transport vehicle, portable tank or freight container that contains 454 kg (1,001 pounds) or more gross weight of non-fissile, fissile-excepted, or fissile uranium hexafluoride must be placarded with a CORROSIVE placard and a POISON placard on each side and each end.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 18. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 19. In § 173.4a, paragraph (e)(3) is revised to read as follows:

§ 173.4a Excepted quantities.

* * * * *

(e) * * *

(3) Each inner packaging must be securely packed in an intermediate packaging with cushioning material in such a way that, under normal conditions of transport, it cannot break, be punctured or leak its contents. The completed package as prepared for transport must completely contain the contents in case of breakage or leakage, regardless of package orientation. For liquid hazardous materials, the intermediate or outer packaging must contain sufficient absorbent material that:

(i) Will absorb the entire contents of the inner packaging.

(ii) Will not react dangerously with the material or reduce the integrity or function of the packaging materials.

(iii) When placed in the intermediate packaging, the absorbent material may be the cushioning material.

* * * * *

■ 20. In § 173.9, paragraph (e) is revised to read as follows:

§ 173.9 Transport vehicles or freight containers containing lading which has been fumigated.

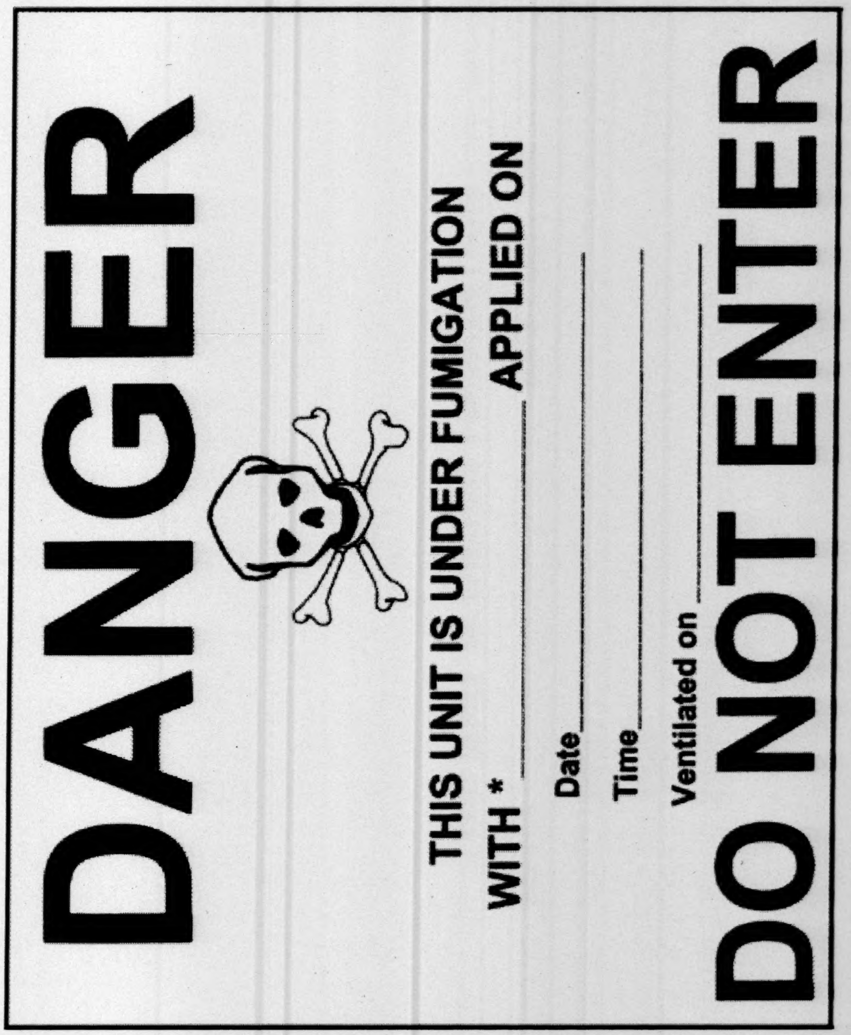
* * * * *

(e) *FUMIGANT marking.* (1) The FUMIGANT marking must consist of black letters on a white background that is a rectangle at least 400 mm (15.75 inches) wide and at least 300 mm (11.8 inches) high as measured to the outside of the lines forming the border of the marking. The minimum width of the line forming the border must be 2 mm and the text on the marking must not be less than 25 mm high. Except for size and color, the FUMIGANT marking must be as shown in the following figure. Where dimensions are not specified, all features shall be in approximate proportion to those shown.

(i) The marking, and all required information, must be capable of withstanding, without deterioration or a substantial reduction in effectiveness, a 30-day exposure to open weather conditions.

(ii) [Reserved]

BILLING CODE 4910–60–P



BILLING CODE 4910–60–C

(2) The "*" shall be replaced with the technical name of the fumigant.

* * * * *

■ 21. In § 173.21, revise paragraph (f) to read as follows:

§ 173.21 Forbidden materials and packages.

* * * * *

(f) A package containing a material which is likely to decompose with a self-accelerated decomposition temperature (SADT) or a self-accelerated polymerization temperature (SAPT) of 50 °C (122 °F) or less, with an evolution of a dangerous quantity of heat or gas when decomposing or polymerizing, unless the material is stabilized or inhibited in a manner to preclude such evolution. The SADT and SAPT may be determined by any of the test methods described in Part II of the UN Manual of Tests and Criteria (IBR, see § 171.7 of this subchapter).

(1) A package meeting the criteria of paragraph (f) of this section may be required to be shipped under controlled temperature conditions. The control temperature and emergency temperature for a package shall be as specified in the table in this paragraph based upon the SADT or SAPT of the material. The control temperature is the temperature above which a package of the material may not be offered for transportation or transported. The emergency temperature is the temperature at which, due to imminent danger, emergency measures must be initiated.

§ 173.21 TABLE—DERIVATION OF CONTROL AND EMERGENCY TEMPERATURE

SADT/SAPT[1]	Control temperatures	Emergency temperature
SADT/SAPT ≤20 °C (68 °F)	20 °C (36 °F) below SADT/SAPT	10 °C (18 °F) below SADT/SAPT.
20 °C (68 °F) <SADT/SAPT ≤35 °C (95 °F)	15 °C (27 °F) below SADT/SAPT	10 °C (18 °F) below SADT/SAPT.
35 °C (95 °F) <SADT/SAPT ≤50 °C (122 °F)	10 °C (18 °F) below SADT/SAPT	5 °C (9 °F) below SADT/SAPT.
50 °C (122 °F) <SADT/SAPT	(2)	(2)

[1] Self-accelerating decomposition temperature or Self-accelerating polymerization temperature.

[2] Temperature control not required.

* * * * *

■ 22. In § 173.40, paragraph (a)(1) is revised to read as follows:

§ 173.40 General packaging requirements for toxic materials packaged in cylinders.

(a) * * *

(1) A cylinder must conform to a DOT specification or UN standard prescribed in subpart C of part 178 of this subchapter, or a TC, CTC, CRC, or BTC cylinder authorized in § 171.12 of this subchapter, except that acetylene cylinders are not authorized. The use of UN tubes and MEGCs is prohibited for Hazard Zone A materials.

* * * * *

■ 23. In § 173.50, paragraph (b)(6) is revised to read as follows:

§ 173.50 Class 1—Definitions.

* * * * *

(b) * * *

(6) Division 1.6[2] consists of extremely insensitive articles that do not have a mass explosion hazard. This division is comprised of articles which predominately contain extremely insensitive substances and that demonstrate a negligible probability of accidental initiation or propagation.

[2] The risk from articles of Division 1.6 is limited to the explosion of a single article.

* * * * *

■ 24. In § 173.52, in paragraph (b), in Table 1, the entry for "Articles predominantly containing extremely insensitive substances" is revised to read as follows:

§ 173.52 Classification codes and compatibility groups of explosives.

(b) * * *

TABLE 1—CLASSIFICATION CODES

Description of substances or article to be classified	Compatibility group	Classification code
* * * * *	*	*
Articles predominantly containing extremely insensitive substances	N	1.6N
* * * * *	*	*

■ 25. In § 173.62, in paragraph (b), in the Explosives Table, the entry for UN0510 is added after UN0509; in paragraph (c), in the Table of Packing Methods, Packing Instructions 112(c), 114(b), 130, and 137 are revised to read as follows:

§ 173.62 Specific packaging requirements for explosives.

* * * * *

(b) * * *

EXPLOSIVES TABLE

ID No.	PI
* * * *	*
UN0510	130
* * * *	*

(c) * * *

TABLE OF PACKING METHODS

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
* * *	*	* *	* *
112(c) This packing instruction applies to solid dry powders.	Bags	Bags	Boxes.
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS:			

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
1. For UN 0004, 0076, 0078, 0154, 0216, 0219 and 0386, packagings must be lead free. 2. For UN0209, bags, sift-proof (5H2) are recommended for flake or prilled TNT in the dry state. Bags must not exceed a maximum net mass of 30 kg. 3. Inner packagings are not required if drums are used as the outer packaging. 4. At least one of the packagings must be sift-proof. 5. For UN 0504, metal packagings must not be used. Packagings of other material with a small amount of metal, for example metal closures or other metal fittings such as those mentioned in part 178 of this subchapter, are not considered metal packagings.	paper, multiwall, water resistant plastics, woven plastics, Receptacles, fiberboard, metal, plastics, wood.	paper, multiwall, water resistant, with inner lining plastics, Receptacles, metal, plastics, wood.	steel (4A), aluminum (4B), other metal (4N), natural wood,ordinary (4C1), natural wood, sift proof (4C2), plywood (4D), reconstituted wood (4F), fiberboard (4G), plastics, solid (4H2), Drums, plastics (1H1 or 1H2), steel (1A1 or 1A2), aluminum (1B1 or 1B2), other metal (1N1 or 1N2), plywood (1D), fiber (1G).
* * *	*	* *	*
114(b)	Bags	Not necessary	Boxes
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN Nos. 0077, 0132, 0234, 0235 and 0236, packagings must be lead free. 2. For UN0160 and UN0161, when metal drums (1A2, 1B2 or 1N2) are used as the outer packaging, metal packagings must be so constructed that the risk of explosion, by reason of increased internal pressure from internal or external causes, is prevented. 3. For UN0160, UN0161, and UN0508, inner packagings are not necessary if drums are used as the outer packaging. 4. For UN0508 and UN0509, metal packagings must not be used. Packagings of other material with a small amount of metal, for example metal closures or other metal fittings such as those mentioned in part 178 of this subchapter, are not considered metal packagings.	paper, kraft, plastics, textile, sift-proof, woven plastics, sift-proof. Receptacles, fiberboard, metal, paper, plastics, wood, woven plastics, sift-proof.		natural wood, ordinary (4C1), natural wood, sift-proof walls (4C2), plywood (4D), reconstituted wood (4F), fiberboard (4G), Drums. steel (1A1 or 1A2), aluminum (1B1 or 1B2), other metal (1N1 or 1N2), plywood (1D), fiber (1G), plastics (1H1 or 1H2).
* * *	*	* *	*
130	Not necessary	Not necessary	Boxes.
Particular Packaging Requirements: 1. The following applies to UN 0006, 0009, 0010, 0015, 0016, 0018, 0019, 0034, 0035, 0038, 0039, 0048, 0056, 0137, 0138, 0168, 0169, 0171, 0181, 0182, 0183, 0186, 0221, 0238, 0243, 0244, 0245, 0246, 0254, 0280, 0281, 0286, 0287, 0297, 0299, 0300, 0301, 0303, 0321, 0328, 0329, 0344, 0345, 0346, 0347, 0362, 0363, 0370, 0412, 0424, 0425, 0434, 0435, 0436, 0437, 0438, 0451, 0459, 0488, 0502 and 0510. Large and robust explosives articles, normally intended for military use, without their means of initiation or with their means of initiation containing at least two effective protective features, may be carried unpackaged. When such articles have propelling charges or are self-propelled, their ignition systems must be protected against stimuli encountered during normal conditions of transport. A negative result in Test Series 4 on an unpackaged article indicates that the article can be considered for transport unpackaged. Such unpackaged articles may be fixed to cradles or contained in crates or other suitable handling devices. 2. Subject to approval by the Associate Administrator, large explosive articles, as part of their operational safety and suitability tests, subjected to testing that meets the intentions of Test Series 4 of the UN Manual of Tests and Criteria with successful test results, may be offered for transportation in accordance with the requirements of this subchapter.			Steel (4A), Aluminum (4B), Other metal (4N), Wood natural, ordinary (4C1), Wood natural, sift-proof walls (4C2), Plywood (4D), Reconstituted wood (4F), Fiberboard (4G), Plastics, expanded (4H1), Plastics, solid (4H2), Drums. Steel (1A1 or 1A2), Aluminum (1B1 or 1B2), Other metal (1N1 or 1N2), Plywood (1D), Fiber (1G), Plastics (1H1 or 1H2), Large Packagings, Steel (50A), Aluminum (50B), Metal other than steel or aluminum (50N), Rigid plastics (50H), Natural wood (50C), Plywood (50D), Reconstituted wood (50F), Rigid fiberboard (50G).

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
* * *	*	* *	*
137	Bags	Not necessary	Boxes.
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS:			
For UN 0059, 0439, 0440 and 0441, when the shaped charges are packed singly, the conical cavity must face downwards and the package marked in accordance with § 172.312(b) of this subchapter. When the shaped charges are packed in pairs, the conical cavities must face inwards to minimize the jetting effect in the event of accidental initiation.	plastics, Boxes, fiberboard, wood, Tubes, fiberboard, metal, plastics, Dividing partitions in the outer packagings.		steel (4A), aluminum (4B), other metal (4N), wood, natural, ordinary (4C1), wood, natural, sift proof walls (4C2), plastics, solid (4H2), plywood (4D), reconstituted wood (4F), fiberboard (4G), Drums, steel (1A1 or 1A2), aluminum (1B1 or 1B2), other metal (1N1 or 1N2), plywood (1D), fiber (1G), plastics (1H1 or 1H2).
* * *	*	* *	*

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■ 26. In § 173.121, (b)(1)(iv) is revised and a new footnote 1 is added to read as follows:

§ 173.121 Class 3—Assignment of packing group.

* * * * *

(b) * * *

(1) * * *

(iv) The viscosity[1] and flash point are in accordance with the following table:

Kinematic viscosity (extrapolated) ν (at near-zero shear rate) mm2/s at 23 °C (73.4 °F)	Flow-time t in seconds	Jet diameter in mm	Flash point c.c.
$20 < \nu \leq 80$	$20 < t \leq 60$	4	above 17 °C (62.6 °F).
$80 < \nu \leq 135$	$60 < t \leq 100$	4	above 10 °C (50 °F).
$135 < \nu \leq 220$	$20 < t \leq 32$	6	above 5 °C (41 °F).
$220 < \nu \leq 300$	$32 < t \leq 44$	6	above −1 °C (31.2 °F).
$300 < \nu \leq 700$	$44 < t \leq 100$	6	above −5 °C (23 °F).
$700 < \nu$	$100 < t$	6	No limit.

[1] *Viscosity determination:* Where the substance concerned is non-Newtonian, or where a flow-cup method of viscosity determination is otherwise unsuitable, a variable shear-rate viscometer shall be used to determine the dynamic viscosity coefficient of the substance, at 23 °C (73.4 °F), at a number of shear rates. The values obtained are plotted against shear rate and then extrapolated to zero shear rate. The dynamic viscosity thus obtained, divided by the density, gives the apparent kinematic viscosity at near-zero shear rate.

* * * * *

■ 27. Section 173.124 is revised to read as follows:

§ 173.124 Class 4, Divisions 4.1, 4.2 and 4.3—Definitions.

(a) *Division 4.1 (Flammable Solid).* For the purposes of this subchapter, *flammable solid* (Division 4.1) means any of the following four types of materials:

(1) Desensitized explosives that—

(i) When dry are Explosives of Class 1 other than those of compatibility group A, which are wetted with sufficient water, alcohol, or plasticizer to suppress explosive properties; and

(ii) Are specifically authorized by name either in the Hazardous Materials Table in § 172.101 or have been assigned a shipping name and hazard class by the Associate Administrator under the provisions of—

(A) A special permit issued under subchapter A of this chapter; or

(B) An approval issued under § 173.56(i) of this part.

(2)(i) Self-reactive materials that are thermally unstable and can undergo an exothermic decomposition even without participation of oxygen (air). A material is excluded from this definition if any of the following applies:

(A) The material meets the definition of an explosive as prescribed in subpart C of this part, in which case it must be classed as an explosive;

(B) The material is forbidden from being offered for transportation according to § 172.101 of this subchapter or § 173.21;

(C) The material meets the definition of an oxidizer or organic peroxide as prescribed in subpart D of this part, in which case it must be so classed;

(D) The material meets one of the following conditions:

(*1*) Its heat of decomposition is less than 300 J/g; or

(*2*) Its self-accelerating decomposition temperature (SADT) is greater than 75 °C (167 °F) for a 50 kg package; or

(*3*) It is an oxidizing substance in Division 5.1 containing less than 5.0% combustible organic substances; or

(E) The Associate Administrator has determined that the material does not present a hazard which is associated with a Division 4.1 material.

(ii) *Generic types.* Division 4.1 self-reactive materials are assigned to a generic system consisting of seven types. A self-reactive substance identified by technical name in the Self-Reactive Materials Table in § 173.224 is assigned to a generic type in accordance with that table. Self-reactive materials not identified in the Self-Reactive Materials Table in § 173.224 are assigned to generic types under the procedures of paragraph (a)(2)(iii) of this section.

(A) *Type A.* Self-reactive material type A is a self-reactive material which, as packaged for transportation, can detonate or deflagrate rapidly. Transportation of type A self-reactive material is forbidden.

(B) *Type B.* Self-reactive material type B is a self-reactive material which, as packaged for transportation, neither detonates nor deflagrates rapidly, but is liable to undergo a thermal explosion in a package.

(C) *Type C.* Self-reactive material type C is a self-reactive material which, as packaged for transportation, neither detonates nor deflagrates rapidly and cannot undergo a thermal explosion.

(D) *Type D.* Self-reactive material type D is a self-reactive material which—

(*1*) Detonates partially, does not deflagrate rapidly and shows no violent effect when heated under confinement;

(*2*) Does not detonate at all, deflagrates slowly and shows no violent effect when heated under confinement; or

(*3*) Does not detonate or deflagrate at all and shows a medium effect when heated under confinement.

(E) *Type E.* Self-reactive material type E is a self-reactive material which, in laboratory testing, neither detonates nor deflagrates at all and shows only a low or no effect when heated under confinement.

(F) *Type F.* Self-reactive material type F is a self-reactive material which, in laboratory testing, neither detonates in the cavitated state nor deflagrates at all and shows only a low or no effect when heated under confinement as well as low or no explosive power.

(G) *Type G.* Self-reactive material type G is a self-reactive material which, in laboratory testing, does not detonate in the cavitated state, will not deflagrate at all, shows no effect when heated under confinement, nor shows any explosive power. A type G self-reactive material is not subject to the requirements of this subchapter for self-reactive material of Division 4.1 provided that it is thermally stable (self-accelerating decomposition temperature is 50 °C (122 °F) or higher for a 50 kg (110 pounds) package). A self-reactive material meeting all characteristics of type G except thermal stability is classed as a type F self-reactive, temperature control material.

(iii) *Procedures for assigning a self-reactive material to a generic type.* A self-reactive material must be assigned to a generic type based on—

(A) Its physical state (*i.e.* liquid or solid), in accordance with the definition of liquid and solid in § 171.8 of this subchapter;

(B) A determination as to its control temperature and emergency temperature, if any, under the provisions of § 173.21(f);

(C) Performance of the self-reactive material under the test procedures specified in the UN Manual of Tests and Criteria (IBR, see § 171.7 of this subchapter) and the provisions of paragraph (a)(2)(iii) of this section; and

(D) Except for a self-reactive material which is identified by technical name in the Self-Reactive Materials Table in § 173.224(b) or a self-reactive material which may be shipped as a sample under the provisions of § 173.224, the self-reactive material is approved in writing by the Associate Administrator. The person requesting approval shall submit to the Associate Administrator the tentative shipping description and generic type and—

(*1*) All relevant data concerning physical state, temperature controls, and tests results; or

(*2*) An approval issued for the self-reactive material by the competent authority of a foreign government.

(iv) *Tests.* The generic type for a self-reactive material must be determined using the testing protocol from Figure 20.1 (a) and (b) (Flow Chart Scheme for Self-Reactive Substances and Organic Peroxides) from the UN Manual of Tests and Criteria (IBR, see § 171.7 of this subchapter).

(3) Readily combustible solids are materials that—

(i) Are solids which may cause a fire through friction, such as matches;

(ii) Show a burning rate faster than 2.2 mm (0.087 inches) per second when tested in accordance with the UN Manual of Tests and Criteria (IBR, see § 171.7 of this subchapter); or

(iii) Any metal powders that can be ignited and react over the whole length of a sample in 10 minutes or less, when tested in accordance with the UN Manual of Tests and Criteria.

(4) Polymerizing materials are materials that are liable to undergo an exothermic reaction resulting in the formation of larger molecules or resulting in the formation of polymers under conditions normally encountered in transport. Such materials are considered to be polymerizing substances of Division 4.1 when:

(i) Their self-accelerating polymerization temperature (SAPT) is 75 °C (167 °F) or less under the conditions (with or without chemical stabilization) as offered for transport in the packaging, IBC or portable tank in which the material or mixture is to be transported. An appropriate packaging for a polymerizing material must be determined using the heating under confinement testing protocol from boxes 7, 8, 9, and 13 of Figure 20.1 (a) and (b) (Flow Chart Scheme for Self-Reactive Substances and Organic Peroxides) from the UN Manual of Tests and Criteria (IBR, see § 171.7 of this subchapter) by successfully passing the UN Test Series E at the "None" or "Low" level or by an equivalent test method;

(ii) They exhibit a heat of reaction of more than 300 J/g; and

(iii) Do not meet the definition of any other hazard class.

(b) *Division 4.2 (Spontaneously Combustible Material).* For the purposes of this subchapter, *spontaneously combustible material* (Division 4.2) means—

(1) *A pyrophoric material.* A pyrophoric material is a liquid or solid that, even in small quantities and without an external ignition source, can ignite within five (5) minutes after coming in contact with air when tested according to UN Manual of Tests and Criteria.

(2) *Self-heating material.* A self-heating material is a material that through a process where the gradual reaction of that substance with oxygen (in air) generates heat. If the rate of heat production exceeds the rate of heat loss, then the temperature of the substance will rise which, after an induction time, may lead to self-ignition and combustion. A material of this type which exhibits spontaneous ignition or if the temperature of the sample exceeds 200 °C (392 °F) during the 24-hour test period when tested in accordance with UN Manual of Tests and Criteria (IBR; *see* § 171.7 of this subchapter), is classed as a Division 4.2 material.

(c) *Division 4.3 (Dangerous when wet material).* For the purposes of this chapter, *dangerous when wet material* (Division 4.3) means a material that, by contact with water, is liable to become spontaneously flammable or to give off flammable or toxic gas at a rate greater than 1 L per kilogram of the material, per hour, when tested in accordance with UN Manual of Tests and Criteria.

■ 28. Section 173.165, is revised to read as follows:

§ 173.165 Polyester resin kits.

(a) Polyester resin kits consisting of a base material component (Class 3, Packing Group II or III) or (Division 4.1, Packing Group II or III) and an activator component (Type D, E, or F organic peroxide that does not require temperature control)—

(1) The organic peroxide component must be packed in inner packagings not over 125 mL (4.22 fluid ounces) net capacity each for liquids or 500 g (17.64 ounces) net capacity each for solids.

(2) Except for transportation by aircraft, the flammable liquid component must be packaged in suitable inner packagings.

(i) For transportation by aircraft, a Class 3 Packing Group II base material is limited to a quantity of 5 L (1.3 gallons) in metal or plastic inner packagings and 1 L (0.3 gallons) in glass inner packagings. A Class 3 Packing Group III base material is limited to a quantity of 10 L (2.6 gallons) in metal or plastic inner packagings and 2.5 L (0.66 gallons) in glass inner packagings.

(ii) For transportation by aircraft, a Division 4.1 Packing Group II base material is limited to a quantity of 5 kg (11 pounds) in metal or plastic inner packagings and 1 kg (2.2 pounds) in glass inner packagings. A Division 4.1 Packing Group III base material is limited to a quantity of 10 kg (22 lbs) in metal or plastic inner packagings and 2.5 kg (5.5 pounds) in glass inner packagings.

(3) If the flammable liquid or solid component and the organic peroxide component will not interact dangerously in the event of leakage, they may be packed in the same outer packaging.

(4) The Packing Group assigned will be II or III, according to the criteria for Class 3, or Division 4.1, as appropriate, applied to the base material. Additionally, polyester resin kits must be packaged in specification combination packagings, based on the performance level required of the base material (II or III) contained within the kit, as prescribed in § 173.202, 173.203, 173.212, or 173.213 of this subchapter, as appropriate.

(5) For transportation by aircraft, the following additional requirements apply:

(i) Closures on inner packagings containing liquids must be secured by secondary means;

(ii) Inner packagings containing liquids must be capable of meeting the pressure differential requirements prescribed in § 173.27(c); and

(iii) The total quantity of activator and base material may not exceed 5 kg (11 lbs) per package for a Packing Group II base material. The total quantity of activator and base material may not exceed 10 kg (22 lbs) per package for a Packing Group III base material. The total quantity of polyester resin kits per package is calculated on a one-to-one basis (*i.e.,* 1 L equals 1 kg).

(b) Polyester resin kits are eligible for the Small Quantity exceptions in § 173.4 and the Excepted Quantity exceptions in § 173.4a, as applicable.

(c) *Limited quantities.* Limited quantity packages of polyester resin kits are excepted from labeling requirements, unless the material is offered for transportation or transported by aircraft, and are excepted from the specification packaging requirements of this subchapter when packaged in combination packagings according to this paragraph. For transportation by aircraft, only hazardous material authorized aboard passenger-carrying aircraft may be transported as a limited quantity. A limited quantity package that conforms to the provisions of this section is not subject to the shipping paper requirements of subpart C of part 172 of this subchapter, unless the material meets the definition of a hazardous substance, hazardous waste, marine pollutant, or is offered for transportation and transported by aircraft or vessel, and is eligible for the exceptions provided in § 173.156. In addition, shipments of limited quantities are not subject to subpart F (Placarding) of part 172 of this subchapter. Each package must conform to the general packaging requirements of subpart B of this part and may not exceed 30 kg (66 pounds) gross weight.

(1) Except for transportation by aircraft, the organic peroxide component must be packed in inner packagings not over 125 mL (4.22 fluid ounces) net capacity each for liquids or 500 g (17.64 ounces) net capacity each for solids. For transportation by aircraft, the organic peroxide component must be packed in inner packagings not over 30 mL (1 fluid ounce) net capacity each for liquids or 100 g (3.5 ounces) net capacity each for solids.

(2) Except for transportation by aircraft, the flammable liquid component must be packed in inner packagings not over 5 L (1.3 gallons) net capacity each for a Packing Group II and Packing Group III liquid. For transportation by aircraft, the flammable liquid component must be packed in inner packagings not over 1 L (0.3 gallons) net capacity each for a Packing Group II material. For transportation by aircraft, the flammable liquid component must be packed in metal or plastic inner packagings not over 5.0 L (1.3 gallons) net capacity each or glass inner packagings not over 2.5 L (0.66 gallons) net capacity each for a Packing Group III material.

(3) Except for transportation by aircraft, the flammable solid component must be packed in inner packagings not over 5 kg (11 pounds) net capacity each for a Packing Group II and Packing Group III solid. For transportation by aircraft, the flammable solid component must be packed in inner packagings not over 1 kg (2.2 pounds) net capacity each for a Packing Group II material. For transportation by aircraft, the flammable solid component must be packed in metal or plastic inner packagings not over 5.0 kg (11 pounds) net capacity each or glass inner packagings not over 2.5 kg (5.5 pounds) net capacity each for a Packing Group III material.

(4) If the flammable liquid or solid component and the organic peroxide component will not interact dangerously in the event of leakage, they may be packed in the same outer packaging.

(5) For transportation by aircraft, the following additional requirements apply:

(i) Closures on inner packagings containing liquids must be secured by secondary means as prescribed in § 173.27(d);

(ii) Inner packagings containing liquids must be capable of meeting the pressure differential requirements prescribed in § 173.27(c); and

(iii) The total quantity of activator and base material may not exceed 1 kg (2.2 pounds) per package for a Packing Group II base material. The total quantity of activator and base material may not exceed 5 kg (11 pounds) per package for a Packing Group III base material. The total quantity of polyester resin kits per package is calculated on a one-to-one basis (*i.e.,* 1 L equals 1 kg);

(iv) *Drop test capability.* Fragile inner packagings must be packaged to prevent failure under conditions normally incident to transport. Packages of consumer commodities must be capable of withstanding a 1.2 m drop on solid concrete in the position most likely to cause damage; and

(v) *Stack test capability.* Packages of consumer commodities must be capable of withstanding, without failure or leakage of any inner packaging and without any significant reduction in effectiveness, a force applied to the top surface for a duration of 24 hours equivalent to the total weight of identical packages if stacked to a height of 3.0 m (including the test sample).

(d) *Consumer commodities.* Until December 31, 2020, a limited quantity package of polyester resin kits that are also consumer commodities as defined in § 171.8 of this subchapter may be renamed ''Consumer commodity'' and reclassed as ORM–D or, until December 31, 2012, as ORM–D–AIR material and offered for transportation and transported in accordance with the applicable provisions of this subchapter in effect on October 1, 2010.

■ 29. In § 173.185, the introductory paragraph and paragraphs (c)(2), (c)(3), (c)(4)(ii), (e), and (f)(4) are revised to read as follows:

§ 173.185 Lithium cells and batteries.

As used in this section, *lithium cell(s)* or *battery(ies)* includes both lithium metal and lithium ion chemistries. *Equipment* means the device or apparatus for which the lithium cells or batteries will provide electrical power for its operation. *Consignment* means one or more packages of hazardous materials accepted by an operator from one shipper at one time and at one address, receipted for in one lot and moving to one consignee at one destination address.

* * * * *

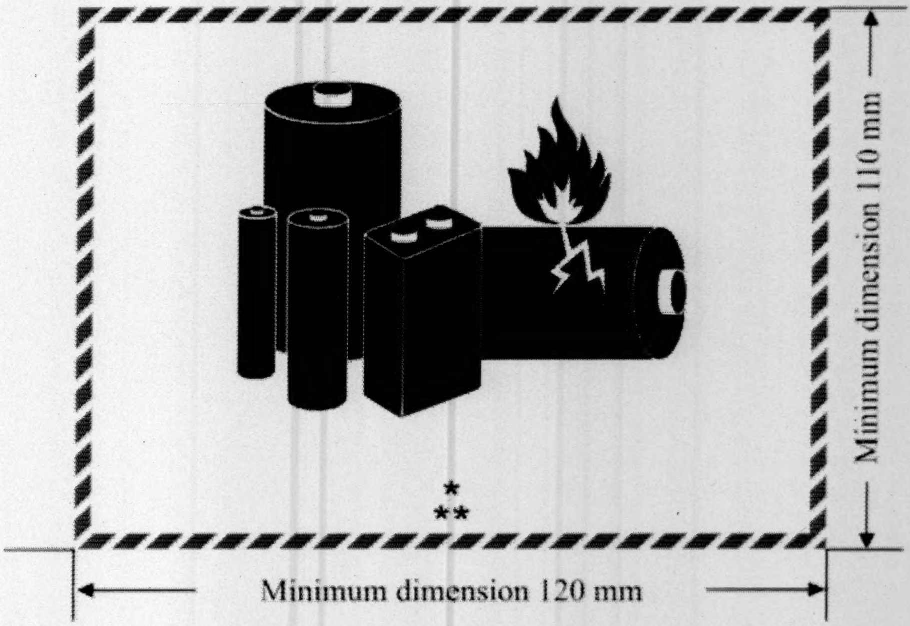
(c) * * *

(2) *Packaging.* Each package, or the completed package when packed with or contained in equipment, must be rigid. Except when lithium cells or batteries are contained in equipment, each package of lithium cells or batteries, or the completed package when packed with equipment must be capable of withstanding a 1.2 meter drop test, in any orientation, without damage to the cells or batteries contained in the package, without shifting of the contents that would allow battery-to-battery (or cell-to-cell) contact, and without release of the contents of the package.

(3) *Hazard communication.* Each package must display the lithium battery mark except when a package contains button cell batteries installed in equipment (including circuit boards), or no more than four lithium cells or two lithium batteries contained in equipment, where there are not more than two packages in the consignment.

(i) The mark must indicate the UN number, 'UN3090' for lithium metal cells or batteries or 'UN 3480' for lithium ion cells or batteries. Where the lithium cells or batteries are contained in, or packed with, equipment, the UN number 'UN3091' or 'UN 3481' as appropriate must be indicated. Where a package contains lithium cells or batteries assigned to different UN numbers, all applicable UN numbers must be indicated on one or more marks. The package must be of such size that there is adequate space to affix the mark on one side without the mark being folded. [PHOTO]

BILLING CODE 4910–60–P



BILLING CODE 4910–60–C

(A) The mark must be in the form of a rectangle with hatched edging. The mark must be not less than 120 mm (4.7 inches) wide by 110 mm (4.3 inches) high and the minimum width of the hatching must be 5 mm (0.2 inches) except markings of 105 mm (4.1 inches) wide by 74 mm (2.9 inches) high may be used on a package containing lithium batteries when the package is too small for the larger mark;

(B) The symbols and letters must be black on white or suitable contrasting background and the hatching must be red;

(C) The "*" must be replaced by the appropriate UN number(s) and the "**" must be replaced by a telephone number for additional information; and

(D) Where dimensions are not specified, all features shall be in approximate proportion to those shown.

(ii) The provisions for marking packages in effect on December 31, 2016 may continue to be used until December 31, 2018.

(4) * * *

(ii) When packages required to bear the lithium battery mark in paragraph (c)(3)(i) are placed in an overpack, the lithium battery mark must either be clearly visible through the overpack, or the handling marking must also be affixed on the outside of the overpack, and the overpack must be marked with the word "OVERPACK".

* * * * *

(e) *Low production runs and prototypes.* Low production runs (*i.e.,* annual production runs consisting of not more than 100 lithium cells or batteries), or prototype lithium cells or batteries, including equipment transported for purposes of testing, are excepted from the testing and record keeping requirements of paragraph (a) of this section, provided:

(1) Except as provided in paragraph (e)(3) of this section, each cell or battery is individually packed in a non-metallic inner packaging, inside an outer packaging, and is surrounded by cushioning material that is non-combustible and non-conductive or contained in equipment. Equipment must be constructed or packaged in a manner as to prevent accidental operation during transport;

(2) Appropriate measures shall be taken to minimize the effects of vibration and shocks and prevent movement of the cells or batteries within the package that may lead to damage and a dangerous condition during transport. Cushioning material that is non-combustible and non-conductive may be used to meet this requirement

(3) The lithium cells or batteries are packed in inner packagings or contained in equipment. The inner packaging or equipment is placed in one of the following outer packagings that meet the requirements of part 178, subparts L and M at the Packing Group I level. Cells and batteries, including equipment of different sizes, shapes or masses must be placed into an outer packaging of a tested design type listed in this section provided the total gross mass of the package does not exceed the gross mass for which the design type has been tested. A cell or battery with a net mass of more than 30 kg is limited to one cell or battery per outer packaging;

(i) Metal (4A, 4B, 4N), wooden (4C1, 4C2, 4D, 4F), or solid plastic (4H2) box;

(ii) Metal (1A2, 1B2, 1N2), plywood (1D), or plastic (1H2) drum.

(4) Lithium batteries that weigh 12 kg (26.5 pounds) or more and have a strong, impact-resistant outer casing or assemblies of such batteries, may be packed in strong outer packagings, in protective enclosures (for example, in fully enclosed or wooden slatted crates), or on pallets or other handling devices, instead of packages meeting the UN performance packaging requirements in paragraphs (b)(3)(ii) and (iii) of this section. The battery or battery assembly must be secured to prevent inadvertent movement, and the terminals may not support the weight of other superimposed elements;

(5) Irrespective of the limit specified in column (9B) of the § 172.101 Hazardous Materials Table, the battery or battery assembly prepared for transport in accordance with this paragraph may have a mass exceeding 35 kg gross weight when transported by cargo aircraft;

(6) Batteries or battery assemblies packaged in accordance with this paragraph are not permitted for transportation by passenger-carrying aircraft, and may be transported by cargo aircraft only if approved by the Associate Administrator prior to transportation; and

(7) Shipping papers must include the following notation "Transport in accordance with § 173.185(e)."

* * * * *

(f) * * *

(4) The outer package must be marked with an indication that the package contains a "Damaged/defective lithium ion battery" and/or "Damaged/defective lithium metal battery" as appropriate. The marking required by this paragraph must be in characters at least 12 mm (0.47 inches) high.

* * * * *

■ 30. In § 173.217, revise paragraph (c)(3) to read as follows:

§ 173.217 Carbon dioxide, solid (dry ice).

* * * * *

(c) * * *

(3) The quantity limits per package shown in Columns (9A) and (9B) of the Hazardous Materials Table in § 172.101 are not applicable to dry ice being used as a refrigerant for other than hazardous materials loaded in a unit load device. In such a case, the unit load device must be identified to the operator and allow the venting of the carbon dioxide gas to prevent a dangerous build-up of pressure.

* * * * *

■ 31. Section 173.220 is revised to read as follows:

§ 173.220 Internal combustion engines, vehicles, machinery containing internal combustion engines, battery-powered equipment or machinery, fuel cell-powered equipment or machinery.

(a) *Applicability.* An internal combustion engine, self-propelled vehicle, machinery containing an internal combustion engine that is not consigned under the "Dangerous goods in machinery *or* apparatus" UN 3363 entry, a battery-powered vehicle or equipment, or a fuel cell-powered vehicle or equipment, or any combination thereof, is subject to the requirements of this subchapter when transported as cargo on a transport vehicle, vessel, or aircraft if—

(1) The vehicle, engine, or machinery contains a liquid or gaseous fuel. Vehicles, engines, or machinery may be considered as not containing fuel when the engine components and any fuel lines have been completely drained, sufficiently cleaned of residue, and purged of vapors to remove any potential hazard and the engine when held in any orientation will not release any liquid fuel;

(2) The fuel tank contains a liquid or gaseous fuel. A fuel tank may be considered as not containing fuel when the fuel tank and the fuel lines have been completely drained, sufficiently cleaned of residue, and purged of vapors to remove any potential hazard;

(3) It is equipped with a wet battery (including a non-spillable battery), a sodium battery or a lithium battery; or

(4) Except as provided in paragraph (f)(1) of this section, it contains other hazardous materials subject to the requirements of this subchapter.

(b) *Requirements.* Unless otherwise excepted in paragraph (b)(4) of this section, vehicles, engines, and equipment are subject to the following requirements:

(1) *Flammable liquid fuel and fuels that are marine pollutants.* (i) A fuel tank containing a flammable liquid fuel must be drained and securely closed, except that up to 500 mL (17 ounces) of residual fuel may remain in the tank, engine components, or fuel lines provided they are securely closed to prevent leakage of fuel during transportation. Self-propelled vehicles containing diesel fuel are excepted from the requirement to drain the fuel tanks, provided that sufficient ullage space has been left inside the tank to allow fuel expansion without leakage, and the tank caps are securely closed.

(ii) Engines and machinery containing liquid fuels meeting the definition of a marine pollutant (see § 171.8 of this subchapter) and not meeting the classification criteria of any other Class or Division transported by vessel are subject to the requirements of § 176.906 of this subchapter.

(2) *Flammable liquefied or compressed gas fuel.* (i) For transportation by motor vehicle, rail car or vessel, fuel tanks and fuel systems containing flammable liquefied or compressed gas fuel must be securely closed. For transportation by vessel, the requirements of §§ 176.78(k), 176.905, and 176.906 of this subchapter apply.

(ii) For transportation by aircraft:

(A) Flammable gas-powered vehicles, machines, equipment or cylinders containing the flammable gas must be completely emptied of flammable gas. Lines from vessels to gas regulators, and gas regulators themselves, must also be drained of all traces of flammable gas. To ensure that these conditions are met, gas shut-off valves must be left open and connections of lines to gas regulators must be left disconnected upon delivery of the vehicle to the operator. Shut-off valves must be closed and lines reconnected at gas regulators before loading the vehicle aboard the aircraft; or alternatively;

(B) Flammable gas powered vehicles, machines or equipment, which have cylinders (fuel tanks) that are equipped with electrically operated valves, may be transported under the following conditions:

(*1*) The valves must be in the closed position and in the case of electrically operated valves, power to those valves must be disconnected;

(*2*) After closing the valves, the vehicle, equipment or machinery must be operated until it stops from lack of fuel before being loaded aboard the aircraft;

(*3*) In no part of the closed system shall the pressure exceed 5% of the maximum allowable working pressure of the system or 290 psig (2000 kPa), whichever is less; and

(*4*) There must not be any residual liquefied gas in the system, including the fuel tank.

(3) *Truck bodies or trailers on flat cars—flammable liquid or gas powered.* Truck bodies or trailers with automatic heating or refrigerating equipment of the flammable liquid type may be shipped with fuel tanks filled and equipment operating or inoperative, when used for the transportation of other freight and loaded on flat cars as part of a joint rail and highway movement, provided the equipment and fuel supply conform to the requirements of § 177.834(l) of this subchapter.

(4) *Modal exceptions.* Quantities of flammable liquid fuel greater than 500 mL (17 ounces) may remain in the fuel tank in self-propelled vehicles engines, and machinery only under the following conditions:

(i) For transportation by motor vehicle or rail car, the fuel tanks must be securely closed.

(ii) For transportation by vessel, the shipment must conform to § 176.905 of this subchapter for self-propelled vehicles and § 176.906 of this subchapter for engines and machinery.

(iii) For transportation by aircraft, when carried in aircraft designed or modified for vehicle ferry operations when all the following conditions must be met:

(A) Authorization for this type operation has been given by the appropriate authority in the government of the country in which the aircraft is registered;

(B) Each vehicle is secured in an upright position;

(C) Each fuel tank is filled in a manner and only to a degree that will preclude spillage of fuel during loading, unloading, and transportation; and

(D) Each area or compartment in which a self-propelled vehicle is being transported is suitably ventilated to prevent the accumulation of fuel vapors.

(c) *Battery-powered or installed.* Batteries must be securely installed, and wet batteries must be fastened in an upright position. Batteries must be protected against a dangerous evolution of heat, short circuits, and damage to terminals in conformance with § 173.159(a) and leakage; or must be removed and packaged separately under § 173.159. Battery-powered vehicles, machinery or equipment including battery-powered wheelchairs and mobility aids are not subject to any other requirements of this subchapter except § 173.21 of this subchapter when transported by rail, highway or vessel. Where a vehicle could possibly be handled in other than an upright position, the vehicle must be secured in a strong, rigid outer packaging. The vehicle must be secured by means capable of restraining the vehicle in the outer packaging to prevent any movement during transport which would change the orientation or cause the vehicle to be damaged.

(d) *Lithium batteries.* Except as provided in § 172.102, special provision A101, of this subchapter, vehicles, engines, and machinery powered by lithium metal batteries, that are transported with these batteries installed, are forbidden aboard passenger-carrying aircraft. Lithium batteries contained in vehicles, engines, or mechanical equipment must be securely fastened in the battery holder of the vehicle, engine, or mechanical equipment, and be protected in such a manner as to prevent damage and short circuits (*e.g.,* by the use of non-conductive caps that cover the terminals entirely). Except for vehicles, engines, or machinery transported by highway, rail, or vessel with prototype or low production lithium batteries securely installed, each lithium battery must be of a type that has successfully passed each test in the UN Manual of Tests and Criteria (IBR, see § 171.7 of this subchapter), as specified in § 173.185, unless approved by the Associate Administrator. Where a vehicle could possibly be handled in other than an upright position, the vehicle must be secured in a strong, rigid outer packaging. The vehicle must be secured by means capable of restraining the vehicle in the outer packaging to prevent any movement during transport which would change the orientation or cause the vehicle to be damaged.

(e) *Fuel cells.* A fuel cell must be secured and protected in a manner to prevent damage to the fuel cell. Equipment (other than vehicles, engines or mechanical equipment) such as consumer electronic devices containing fuel cells (fuel cell cartridges) must be described as "Fuel cell cartridges contained in equipment" and transported in accordance with § 173.230. Where a vehicle could possibly be handled in other than an upright position, the vehicle must be secured in a strong, rigid outer packaging. The vehicle must be secured by means capable of restraining the vehicle in the outer packaging to prevent any movement during transport which would change the orientation or cause the vehicle to be damaged.

(f) *Other hazardous materials.* (1) Items containing hazardous materials, such as fire extinguishers, compressed gas accumulators, safety devices, and other hazardous materials that are integral components of the motor vehicle, engine, or mechanical equipment, and that are necessary for the operation of the vehicle, engine, or mechanical equipment, or for the safety of its operator or passengers, must be securely installed in the motor vehicle, engine, or mechanical equipment. Such items are not otherwise subject to the requirements of this subchapter. Equipment (other than vehicles, engines, or mechanical equipment), such as consumer electronic devices containing lithium batteries, must be described as "Lithium metal batteries contained in equipment" or "Lithium ion batteries contained in equipment," as appropriate, and transported in accordance with § 173.185, and applicable special provisions. Equipment (other than vehicles, engines, or mechanical equipment), such as consumer electronic devices containing fuel cells (fuel cell cartridges), must be described as "Fuel cell cartridges contained in equipment" and transported in accordance with § 173.230.

(2) Other hazardous materials must be packaged and transported in accordance with the requirements of this subchapter.

(g) *Additional requirements for internal combustion engines and vehicles with certain electronic equipment when transported by aircraft or vessel.* When an internal combustion engine that is not installed in a vehicle or equipment is offered for transportation by aircraft or vessel, all fuel, coolant or hydraulic systems remaining in the engine must be drained as far as practicable, and all disconnected fluid pipes that previously contained fluid must be sealed with leak-proof caps that are positively retained. When offered for transportation by aircraft, vehicles equipped with theft-protection devices, installed radio communications equipment or navigational systems must have such devices, equipment or systems disabled.

(h) *Exceptions.* Except as provided in paragraph (f)(2) of this section, shipments made under the provisions of this section—

(1) Are not subject to any other requirements of this subchapter for transportation by motor vehicle or rail car;

(2) Are not subject to the requirements of subparts D, E, and F (marking, labeling and placarding, respectively) of part 172 of this subchapter or § 172.604 of this subchapter (emergency response telephone number) for transportation by aircraft. For transportation by aircraft, the provisions of § 173.159(b)(2) of this subchapter as applicable, the provisions of § 173.230(f), as applicable, other applicable requirements of this subchapter, including shipping papers, emergency response information, notification of pilot-in-command, general packaging requirements, and the requirements specified in § 173.27 must be met; and

(3) For exceptions for transportation by vessel; see § 176.905 of this subchapter for vehicles, and § 176.906 of this subchapter for engines and machinery.

■ 32. In § 173.221, paragraph (d) is added to read as follows:

§ 173.221 Polymeric beads, expandable and plastic molding compound.

* * * * *

(d) Exceptions. When it can be demonstrated that no flammable vapor, resulting in a flammable atmosphere, is evolved according to test U1 (Test method for substances liable to evolve flammable vapors) of Part III, sub-section 38.4.4 of the UN Manual of Tests and Criteria (IBR, see § 171.7 of this subchapter), polymeric beads, expandable need not be classed as Class 9 (UN2211). This test should only be performed when de-classification of a substance is considered.

■ 33. In § 173.225:

■ a. In paragraph (c), the "Organic Peroxide Table" is revised.

■ b. In paragraph (e), the "Organic Peroxide IBC Table" is revised.

The revisions are to read as follows:

§ 173.225 Packaging requirements and other provisions for organic peroxides.

* * * * *

(c) * * *

(8) * * *

ORGANIC PEROXIDE TABLE

Technical name	ID No.	Concentration (mass %)	Diluent (mass %)			Water (mass %)	Packing method	Temperature (°C)		Notes
			A	B	I			Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
Acetyl acetone peroxide	UN3105	≤42	≥48			≥8	OP7			2
Acetyl acetone peroxide [as a paste].	UN3106	≤32					OP7			21
Acetyl cyclohexanesulfonyl peroxide.	UN3112	≤82				≥12	OP4	−10	0	
Acetyl cyclohexanesulfonyl peroxide.	UN3115	≤32		≥68			OP7	−10	0	
tert-Amyl hydroperoxide	UN3107	≤88	≥6			≥6	OP8			
tert-Amyl peroxyacetate	UN3105	≤62	≥38				OP7			
tert-Amyl peroxybenzoate	UN3103	≤100					OP5			
tert-Amyl peroxy-2-ethylhexanoate.	UN3115	≤100					OP7	20	25	
tert-Amyl peroxy-2-ethylhexyl carbonate.	UN3105	≤100					OP7			
tert-Amyl peroxy isopropyl carbonate.	UN3103	≤77	≥23				OP5			
tert-Amyl peroxyneodecanoate.	UN3115	≤77		≥23			OP7	0	10	
tert-Amyl peroxyneodecanoate.	UN3119	≤47	≥53				OP8	0	10	
tert-Amyl peroxypivalate	UN3113	≤77		≥23			OP5	10	15	
tert-Amyl peroxypivalate	UN3119	≤32	≥68				OP8	10	15	
tert-Amyl peroxy-3,5,5-trimethylhexanoate.	UN3105	≤100					OP7			
tert-Butyl cumyl peroxide	UN3109	>42–100					OP8			9
tert-Butyl cumyl peroxide	UN3108	≤52			≥48		OP8			9
n-Butyl-4,4-di-(tert-butylperoxy)valerate.	UN3103	>52–100					OP5			
n-Butyl-4,4-di-(tert-butylperoxy)valerate.	UN3108	≤52			≥48		OP8			
tert-Butyl hydroperoxide	UN3103	>79–90				≥10	OP5			13
tert-Butyl hydroperoxide	UN3105	≤80	≥20				OP7			4, 13
tert-Butyl hydroperoxide	UN3107	≤79				>14	OP8			13, 16
tert-Butyl hydroperoxide	UN3109	≤72				≥28	OP8			13
tert-Butyl hydroperoxide [and] Di-tert-butylperoxide.	UN3103	<82 + >9				≥7	OP5			13
tert-Butyl monoperoxymaleate	UN3102	>52–100					OP5			
tert-Butyl monoperoxymaleate	UN3103	≤52	≥48				OP6			
tert-Butyl monoperoxymaleate	UN3108	≤52			≥48		OP8			
tert-Butyl monoperoxymaleate [as a paste].	UN3108	≤52					OP8			
tert-Butyl peroxyacetate	UN3101	>52–77	≥23				OP5			
tert-Butyl peroxyacetate	UN3103	>32–52	≥48				OP6			
tert-Butyl peroxyacetate	UN3109	≤32		≥68			OP8			
tert-Butyl peroxybenzoate	UN3103	>77–100					OP5			
tert-Butyl peroxybenzoate	UN3105	>52–77	≥23				OP7			1
tert-Butyl peroxybenzoate	UN3106	≤52			≥48		OP7			
tert-Butyl peroxybenzoate	UN3109	≤32	≥68				OP8			

ORGANIC PEROXIDE TABLE—Continued

Technical name	ID No.	Concentration (mass %)	Diluent (mass %)			Water (mass %)	Packing method	Temperature (°C)		Notes
			A	B	I			Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
tert-Butyl peroxybutyl fumarate.	UN3105	≤52	≥48				OP7			
tert-Butyl peroxycrotonate	UN3105	≤77	≥23				OP7			
tert-Butyl peroxydiethylacetate	UN3113	≤100					OP5	20	25	
tert-Butyl peroxy-2-ethylhexanoate.	UN3113	>52–100					OP6	20	25	
tert-Butyl peroxy-2-ethylhexanoate.	UN3117	>32–52		≥48			OP8	30	35	
tert-Butyl peroxy-2-ethylhexanoate.	UN3118	≤52			≥48		OP8	20	25	
tert-Butyl peroxy-2-ethylhexanoate.	UN3119	≤32		≥68			OP8	40	45	
tert-Butyl peroxy-2-ethylhexanoate [and] 2,2-di-(tert-Butylperoxy)butane.	UN3106	≤12 + ≤14	≥14		≥60		OP7			
tert-Butyl peroxy-2-ethylhexanoate [and] 2,2-di-(tert-Butylperoxy)butane.	UN3115	≤31 + ≤36		≥33			OP7	35	40	
tert-Butyl peroxy-2-ethylhexylcarbonate.	UN3105	≤100					OP7			
tert-Butyl peroxyisobutyrate	UN3111	>52–77		≥23			OP5	15	20	
tert-Butyl peroxyisobutyrate	UN3115	≤52		≥48			OP7	15	20	
tert-Butylperoxy isopropylcarbonate.	UN3103	≤77	≥23				OP5			
1-(2-tert-Butylperoxy isopropyl)-3-isopropenylbenzene.	UN3105	≤77	≥23				OP7			
1-(2-tert-Butylperoxy isopropyl)-3-isopropenylbenzene.	UN3108	≤42			≥58		OP8			
tert-Butyl peroxy-2-methylbenzoate.	UN3103	≤100					OP5			
tert-Butyl peroxyneodecanoate.	UN3115	>77–100					OP7	−5	5	
tert-Butyl peroxyneodecanoate.	UN3115	≤77		≥23			OP7	0	10	
tert-Butyl peroxyneodecanoate [as a stable dispersion in water].	UN3119	≤52					OP8	0	10	
tert-Butyl peroxyneodecanoate [as a stable dispersion in water (frozen)].	UN3118	≤42					OP8	0	10	
tert-Butyl peroxyneodecanoate.	UN3119	≤32	≥68				OP8	0	10	
tert-Butyl peroxyneoheptanoate.	UN3115	≤77	≥23				OP7	0	10	
tert-Butyl peroxyneoheptanoate [as a stable dispersion in water].	UN3117	≤42					OP8	0	10	
tert-Butyl peroxypivalate	UN3113	>67–77	≥23				OP5	0	10	
tert-Butyl peroxypivalate	UN3115	>27–67		≥33			OP7	0	10	
tert-Butyl peroxypivalate	UN3119	≤27		≥73			OP8	30	35	
tert-Butylperoxy stearylcarbonate.	UN3106	≤100					OP7			
tert-Butyl peroxy-3,5,5-trimethylhexanoate.	UN3105	>37–100					OP7			
tert-Butyl peroxy-3,5,5-trimethlyhexanoate.	UN3106	≤42			≥58		OP7			
tert-Butyl peroxy-3,5,5-trimethylhexanoate.	UN3109	≤37		≥63			OP8			
3-Chloroperoxybenzoic acid	UN3102	>57–86			≥14		OP1			
3-Chloroperoxybenzoic acid	UN3106	≤57			≥3	≥40	OP7			
3-Chloroperoxybenzoic acid	UN3106	≤77			≥6	≥17	OP7			
Cumyl hydroperoxide	UN3107	>90–98	≤10				OP8			13
Cumyl hydroperoxide	UN3109	≤90	≥10				OP8			13, 15
Cumyl peroxyneodecanoate	UN3115	≤87	≥13				OP7	−10	0	
Cumyl peroxyneodecanoate	UN3115	≤77		≥23			OP7	−10	0	
Cumyl peroxyneodecanoate [as a stable dispersion in water].	UN3119	≤52					OP8	−10	0	
Cumyl peroxyneoheptanoate	UN3115	≤77	≥23				OP7	−10	0	
Cumyl peroxypivalate	UN3115	≤77		≥23			OP7	−5	5	
Cyclohexanone peroxide(s)	UN3104	≤91				≥9	OP6			13
Cyclohexanone peroxide(s)	UN3105	≤72	≥28				OP7			5
Cyclohexanone peroxide(s) [as a paste].	UN3106	≤72					OP7			5, 21

ORGANIC PEROXIDE TABLE—Continued

Technical name	ID No.	Concentration (mass %)	Diluent (mass %)			Water (mass %)	Packing method	Temperature (°C)		Notes
			A	B	I			Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
Cyclohexanone peroxide(s)	Exempt	≤32		>68			Exempt			29
Diacetone alcohol peroxides	UN3115	≤57		≥26		≥8	OP7	40	45	5
Diacetyl peroxide	UN3115	≤27		≥73			OP7	20	25	8,13
Di-tert-amyl peroxide	UN3107	≤100					OP8			
([3R- (3R, 5aS, 6S, 8aS, 9R, 10R, 12S, 12aR**)]-Decahydro-10-methoxy-3, 6, 9-trimethyl-3, 12-epoxy-12H-pyrano [4, 3- j]-1, 2-benzodioxepin).	UN3106	≤100					OP7			
2,2-Di-(tert-amylperoxy)-butane.	UN3105	≤57	≥43				OP7			
1,1-Di-(tert-amylperoxy)cyclohexane.	UN3103	≤82	≥18				OP6			
Dibenzoyl peroxide	UN3102	>52–100			≤48		OP2			3
Dibenzoyl peroxide	UN3102	>77–94				≥6	OP4			3
Dibenzoyl peroxide	UN3104	≤77				≥23	OP6			
Dibenzoyl peroxide	UN3106	≤62			≥28	≥10	OP7			
Dibenzoyl peroxide [as a paste].	UN3106	>52–62					OP7			21
Dibenzoyl peroxide	UN3106	>35–52			≥48		OP7			
Dibenzoyl peroxide	UN3107	>36–42	≥18			≤40	OP8			
Dibenzoyl peroxide [as a paste].	UN3108	≤56.5				≥15	OP8			
Dibenzoyl peroxide [as a paste].	UN3108	≤52					OP8			21
Dibenzoyl peroxide [as a stable dispersion in water].	UN3109	≤42					OP8			
Dibenzoyl peroxide	Exempt	≤35			≥65		Exempt			29
Di-(4-tert-butylcyclohexyl)peroxydicarbonate.	UN3114	≤100					OP6	30	35	
Di-(4-tert-butylcyclohexyl)peroxydicarbonate [as a stable dispersion in water].	UN3119	≤42					OP8	30	35	
Di-tert-butyl peroxide	UN3107	>52–100					OP8			
Di-tert-butyl peroxide	UN3109	≤52		≥48			OP8			24
Di-tert-butyl peroxyazelate	UN3105	≤52	≥48				OP7			
2,2-Di-(tert-butylperoxy)butane.	UN3103	≤52	≥48				OP6			
1,6-Di-(tert-butylperoxycarbonyloxy)hexane.	UN3103	≤72	≥28				OP5			
1,1-Di-(tert-butylperoxy)cyclohexane.	UN3101	>80–100					OP5			
1,1-Di-(tert-butylperoxy)cyclohexane.	UN3103	>52–80	≥20				OP5			
1,1-Di-(tert-butylperoxy)-cyclohexane.	UN3103	≤72		≥28			OP5			30
1,1-Di-(tert-butylperoxy)cyclohexane.	UN3105	>42–52	≥48				OP7			
1,1-Di-(tert-butylperoxy)cyclohexane.	UN3106	≤42	≥13		≥45		OP7			
1,1-Di-(tert-butylperoxy)cyclohexane.	UN3107	≤27	≥25				OP8			22
1,1-Di-(tert-butylperoxy)cyclohexane.	UN3109	≤42	≥58				OP8			
1,1-Di-(tert-Butylperoxy) cyclohexane.	UN3109	≤37	≥63				OP8			
1,1-Di-(tert-butylperoxy)cyclohexane.	UN3109	≤25	≥25	≥50			OP8			
1,1-Di-(tert-butylperoxy)cyclohexane.	UN3109	≤13	≥13	≥74			OP8			
Di-n-butyl peroxydicarbonate	UN3115	>27–52		≥48			OP7	−15	−5	
Di-n-butyl peroxydicarbonate	UN3117	≤27		≥73			OP8	−10	0	
Di-n-butyl peroxydicarbonate [as a stable dispersion in water (frozen)].	UN3118	≤42					OP8	−15	−5	
Di-sec-butyl peroxydicarbonate.	UN3113	>52–100					OP4	−20	−10	6
Di-sec-butyl peroxydicarbonate.	UN3115	≤52		≥48			OP7	−15	−5	
Di-(tert-butylperoxyisopropyl) benzene(s).	UN3106	>42–100			≤57		OP7			1, 9
Di-(tert-butylperoxyisopropyl) benzene(s).	Exempt	≤42			≥58		Exempt			

ORGANIC PEROXIDE TABLE—Continued

Technical name	ID No.	Concentration (mass %)	Diluent (mass %)			Water (mass %)	Packing method	Temperature (°C)		Notes
			A	B	I			Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
Di-(tert-butylperoxy)phthalate	UN3105	>42–52	≥48				OP7			
Di-(tert-butylperoxy)phthalate [as a paste].	UN3106	≤52					OP7			21
Di-(tert-butylperoxy)phthalate	UN3107	≤42	≥58				OP8			
2,2-Di-(tert-butylperoxy)propane.	UN3105	≤52	≥48				OP7			
2,2-Di-(tert-butylperoxy)propane.	UN3106	≤42	≥13		≥45		OP7			
1,1-Di-(tert-butylperoxy)-3,3,5-trimethylcyclohexane.	UN3101	>90–100					OP5			
1,1-Di-(tert-butylperoxy)-3,3,5-trimethylcyclohexane.	UN3103	>57–90	≥10				OP5			
1,1-Di-(tert-butylperoxy)-3,3,5-trimethylcyclohexane.	UN3103	≤77		≥23			OP5			
1,1-Di-(tert-butylperoxy)-3,3,5-trimethylcyclohexane.	UN3103	≤90		≥10			OP5			30
1,1-Di-(tert-butylperoxy)-3,3,5-trimethylcyclohexane.	UN3110	≤57			≥43		OP8			
1,1-Di-(tert-butylperoxy)-3,3,5-trimethylcyclohexane.	UN3107	≤57	≥43				OP8			
1,1-Di-(tert-butylperoxy)-3,3,5-trimethylcyclohexane.	UN3107	≤32	≥26	≥42			OP8			
Dicetyl peroxydicarbonate	UN3120	≤100					OP8	30	35	
Dicetyl peroxydicarbonate [as a stable dispersion in water].	UN3119	≤42					OP8	30	35	
Di-4-chlorobenzoyl peroxide	UN3102	≤77				≥23	OP5			
Di-4-chlorobenzoyl peroxide	Exempt	≤32			≥68		Exempt			29
Di-2,4-dichlorobenzoyl peroxide [as a paste].	UN3118	≤52				OP8	20	25		
Di-4-chlorobenzoyl peroxide [as a paste].	UN3106	≤52					OP7			21
Dicumyl peroxide	UN3110	>52–100			≤48		OP8			9
Dicumyl peroxide	Exempt	≤52			≥48		Exempt			29
Dicyclohexyl peroxydicarbonate.	UN3112	>91–100					OP3	10	15	
Dicyclohexyl peroxydicarbonate.	UN3114	≤91				≥9	OP5	10	15	
Dicyclohexyl peroxydicarbonate [as a stable dispersion in water].	UN3119	≤42					OP8	15	20	
Didecanoyl peroxide	UN3114	≤100					OP6	30	35	
2,2-Di-(4,4-di(tert-butylperoxy)cyclohexyl)propane.	UN3106	≤42			≥58		OP7			
2,2-Di-(4,4-di(tert-butylperoxy)cyclohexyl)propane.	UN3107	≤22		≥78			OP8			
Di-2,4-dichlorobenzoyl peroxide.	UN3102	≤77				≥23	OP5			
Di-2,4-dichlorobenzoyl peroxide [as a paste with silicone oil].	UN3106	≤52					OP7			
Di-(2-ethoxyethyl) peroxydicarbonate.	UN3115	≤52		≥48			OP7	−10	0	
Di-(2-ethylhexyl) peroxydicarbonate.	UN3113	>77–100					OP5	−20	−10	
Di-(2-ethylhexyl) peroxydicarbonate.	UN3115	≤77		≥23			OP7	−15	−5	
Di-(2-ethylhexyl) peroxydicarbonate [as a stable dispersion in water].	UN3119	≤62					OP8	−15	−5	
Di-(2-ethylhexyl) peroxydicarbonate [as a stable dispersion in water].	UN3119	≤52					OP8	−15	−5	
Di-(2-ethylhexyl) peroxydicarbonate [as a stable dispersion in water (frozen)].	UN3120	≤52					OP8	−15	−5	
2,2-Dihydroperoxypropane	UN3102	≤27			≥73		OP5			
Di-(1-hydroxycyclohexyl)peroxide.	UN3106	≤100					OP7			
Diisobutyryl peroxide	UN3111	>32–52		≥48			OP5	−20	−10	
Diisobutyryl peroxide	UN3115	≤32		≥68			OP7	−20	−10	
Diisopropylbenzene dihydroperoxide.	UN3106	≤82	≥5			≥5	OP7			17
Diisopropyl peroxydicarbonate	UN3112	>52–100					OP2	−15	−5	

ORGANIC PEROXIDE TABLE—Continued

Technical name	ID No.	Concentration (mass %)	Diluent (mass %)			Water (mass %)	Packing method	Temperature (°C)		Notes
			A	B	I			Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
Diisopropyl peroxydicarbonate	UN3115	≤52		≥48			OP7	−20	−10	
Diisopropyl peroxydicarbonate	UN3115	≤32	≥68				OP7	−15	−5	
Dilauroyl peroxide	UN3106	≤100					OP7			
Dilauroyl peroxide [as a stable dispersion in water].	UN3109	≤42					OP8			
Di-(3-methoxybutyl) peroxydicarbonate.	UN3115	≤52		≥48			OP7	−5	5	
Di-(2-methylbenzoyl)peroxide	UN3112	≤87				≥13	OP5	30	35	
Di-(4-methylbenzoyl)peroxide [as a paste with silicone oil].	UN3106	≤52					OP7			
Di-(3-methylbenzoyl) peroxide + Benzoyl (3-methylbenzoyl) peroxide + Dibenzoyl peroxide.	UN3115	≤20 +		≥58			OP7	35	40	
		≤18 + ≤4								
2,5-Dimethyl-2,5-di-(benzoylperoxy)hexane.	UN3102	>82–100					OP5			
2,5-Dimethyl-2,5-di-(benzoylperoxy)hexane.	UN3106	≤82			≥18		OP7			
2,5-Dimethyl-2,5-di-(benzoylperoxy)hexane.	UN3104	≤82				≥18	OP5			
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexane.	UN3103	>90–100					OP5			
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexane.	UN3105	>52–90	≥10				OP7			
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexane.	UN3108	≤77			≥23		OP8			
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexane.	UN3109	≤52	≥48				OP8			
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexane [as a paste].	UN3108	≤47					OP8			
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexyne-3.	UN3101	>86–100					OP5			
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexyne-3.	UN3103	>52–86	≥14				OP5			
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexyne-3.	UN3106	≤52			≥48		OP7			
2,5-Dimethyl-2,5-di-(2-ethylhexanoylperoxy)hexane.	UN3113	≤100					OP5	20	25	
2,5-Dimethyl-2,5-dihydroperoxyhexane.	UN3104	≤82				≥18	OP6			
2,5-Dimethyl-2,5-di-(3,5,5-trimethylhexanoylperoxy)hexane.	UN3105	≤77	≥23				OP7			
1,1-Dimethyl-3-hydroxybutylperoxyneoheptanoate.	UN3117	≤52	≥48				OP8	0	10	
Dimyristyl peroxydicarbonate	UN3116	≤100					OP7	20	25	
Dimyristyl peroxydicarbonate [as a stable dispersion in water].	UN3119	≤42					OP8	20	25	
Di-(2-neodecanoylperoxyisopropyl)benzene.	UN3115	≤52	≥48				OP7	−10	0	
Di-(2-neodecanoylperoxyisopropyl) benzene, as stable dispersion in water.	UN3119	≤42					OP8	−15	−5	
Di-n-nonanoyl peroxide	UN3116	≤100					OP7	0	10	
Di-n-octanoyl peroxide	UN3114	≤100					OP5	10	15	
Di-(2-phenoxyethyl)peroxydicarbonate.	UN3102	>85–100					OP5			
Di-(2-phenoxyethyl)peroxydicarbonate.	UN3106	≤85				≥15	OP7			
Dipropionyl peroxide	UN3117	≤27		≥73			OP8	15	20	
Di-n-propyl peroxydicarbonate	UN3113	≤100					OP3	−25	−15	
Di-n-propyl peroxydicarbonate	UN3113	≤77		≥23			OP5	−20	−10	
Disuccinic acid peroxide	UN3102	>72–100					OP4			18
Disuccinic acid peroxide	UN3116	≤72				≥28	OP7	10	15	
Di-(3,5,5-trimethylhexanoyl) peroxide.	UN3115	>52–82	≥18				OP7	0	10	

ORGANIC PEROXIDE TABLE—Continued

Technical name	ID No.	Concentration (mass %)	Diluent (mass %)			Water (mass %)	Packing method	Temperature (°C)		Notes
			A	B	I			Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
Di-(3,5,5-trimethylhexanoyl)peroxide [as a stable dispersion in water].	UN3119	≤52					OP8	10	15	
Di-(3,5,5-trimethylhexanoyl)peroxide.	UN3119	≤38	≥62				OP8	20	25	
Ethyl 3,3-di-(tert-amylperoxy)butyrate.	UN3105	≤67	≥33				OP7			
Ethyl 3,3-di-(tert-butylperoxy)butyrate.	UN3103	>77–100					OP5			
Ethyl 3,3-di-(tert-butylperoxy)butyrate.	UN3105	≤77	≥23				OP7			
Ethyl 3,3-di-(tert-butylperoxy)butyrate.	UN3106	≤52			≥48		OP7			
1-(2-ethylhexanoylperoxy)-1,3-Dimethylbutyl peroxypivalate.	UN3115	≤52	≥45	≥10			OP7	−20	−10	
tert-Hexyl peroxyneodecanoate.	UN3115	≤71	≥29				OP7	0	10	
tert-Hexyl peroxypivalate	UN3115	≤72		≥28			OP7	10	15	
3-Hydroxy-1,1-dimethylbutyl peroxyneodecanoate.	UN3115	≤77	≥23				OP7	−5	5	
3-Hydroxy-1,1-dimethylbutyl peroxyneodecanoate [as a stable dispersion in water].	UN3119	≤52					OP8	−5	5	
3-Hydroxy-1,1-dimethylbutyl peroxyneodecanoate.	UN3117	≤52	≥48				OP8	−5	5	
Isopropyl sec-butyl peroxydicarbonat + Di-sec-butyl peroxydicarbonate + Di-isopropyl peroxydicarbonate.	UN3111	≤52 + ≤28					OP5	−20	−10	
		+ ≤22								
Isopropyl sec-butyl peroxydicarbonate + Di-sec-butyl peroxydicarbonate + Di-isopropyl peroxydicarbonate.	UN3115	≤32 + ≤15	≥38				OP7	−20	−10	
		−18								
		+ ≤12								
		−15								
Isopropylcumyl hydroperoxide	UN3109	≤72	≥28				OP8			13
p-Menthyl hydroperoxide	UN3105	>72–100					OP7			13
p-Menthyl hydroperoxide	UN3109	≤72	≥28				OP8			
Methylcyclohexanone peroxide(s).	UN3115	≤67		≥33			OP7	35	40	
Methyl ethyl ketone peroxide(s).	UN3101	≤52	≥48				OP5			5, 13
Methyl ethyl ketone peroxide(s).	UN3105	≤45	≥55				OP7			5
Methyl ethyl ketone peroxide(s).	UN3107	≤40	≥60				OP8			7
Methyl isobutyl ketone peroxide(s).	UN3105	≤62	≥19				OP7			5, 23
Methyl isopropyl ketone peroxide(s).	UN3109	(See remark 31)	≥70				OP8			31
Organic peroxide, liquid, sample.	UN3103						OP2			12
Organic peroxide, liquid, sample, temperature controlled.	UN3113						OP2			12
Organic peroxide, solid, sample.	UN3104						OP2			12
Organic peroxide, solid, sample, temperature controlled.	UN3114						OP2			12
3,3,5,7,7-Pentamethyl-1,2,4-Trioxepane.	UN3107	≤100					OP8			
Peroxyacetic acid, type D, stabilized.	UN3105	≤43					OP7			13, 20
Peroxyacetic acid, type E, stabilized.	UN3107	≤43					OP8			13, 20
Peroxyacetic acid, type F, stabilized.	UN3109	≤43					OP8			13, 20, 28
Peroxyacetic acid or peracetic acid [with not more than 7% hydrogen peroxide].	UN3107	≤36				≥15	OP8			13, 20, 28

ORGANIC PEROXIDE TABLE—Continued

Technical name	ID No.	Concentration (mass %)	Diluent (mass %)			Water (mass %)	Packing method	Temperature (°C)		Notes
			A	B	I			Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
Peroxyacetic acid or peracetic acid [with not more than 20% hydrogen peroxide].	Exempt	≤6				≥60	Exempt			28
Peroxyacetic acid or peracetic acid [with not more than 26% hydrogen peroxide].	UN3109	≤17					OP8			13, 20, 28
Peroxylauric acid	UN3118	≤100					OP8	35	40	
Pinanyl hydroperoxide	UN3105	>56–100					OP7			13
Pinanyl hydroperoxide	UN3109	≤56	≥44				OP8			
Polyether poly-tert-butylperoxycarbonate.	UN3107	≤52		≥48			OP8			
Tetrahydronaphthyl hydroperoxide.	UN3106	≤100					OP7			
1,1,3,3-Tetramethylbutyl hydroperoxide.	UN3105	≤100					OP7			
1,1,3,3-Tetramethylbutyl peroxy-2-ethylhexanoate.	UN3115	≤100					OP7	15	20	
1,1,3,3-Tetramethylbutyl peroxyneodecanoate.	UN3115	≤72		≥28			OP7	−5	5	
1,1,3,3-Tetramethylbutyl peroxyneodecanoate [as a stable dispersion in water].	UN3119	≤52					OP8	−5	5	
1,1,3,3-tetramethylbutyl peroxypivalate.	UN3115	≤77	≥23				OP7	0	10	
3, 6, 9-Triethyl-3, 6, 9-trimethyl-1, 4, 7-triperoxonane.	UN3110	≤17	≥18		≥65		OP8			
3,6,9-Triethyl-3,6,9-trimethyl-1,4,7-triperoxonane.	UN3105	≤42	≥58				OP7			26
Di-(3, 5, 5-trimethylhexanoyl) peroxide.	UN3119	>38–52	≥48				OP8	10	15	

1. For domestic shipments, OP8 is authorized.
2. Available oxygen must be <4.7%.
3. For concentrations <80% OP5 is allowed. For concentrations of at least 80% but <85%, OP4 is allowed. For concentrations of at least 85%, maximum package size is OP2.
4. The diluent may be replaced by di-tert-butyl peroxide.
5. Available oxygen must be ≤9% with or without water.
6. For domestic shipments, OP5 is authorized.
7. Available oxygen must be ≤8.2% with or without water.
8. Only non-metallic packagings are authorized.
9. For domestic shipments this material may be transported under the provisions of paragraph (h)(3)(xii) of this section.
10. [Reserved]
11. [Reserved]
12. Samples may only be offered for transportation under the provisions of paragraph (b)(2) of this section.
13. “Corrosive” subsidiary risk label is required.
14. [Reserved]
15. No “Corrosive” subsidiary risk label is required for concentrations below 80%.
16. With <6% di-tert-butyl peroxide.
17. With ≤8% 1-isopropylhydroperoxy-4-isopropylhydroxybenzene.
18. Addition of water to this organic peroxide will decrease its thermal stability.
19. [Reserved]
20. Mixtures with hydrogen peroxide, water and acid(s).
21. With diluent type A, with or without water.
22. With ≥36% diluent type A by mass, and in addition ethylbenzene.
23. With ≥19% diluent type A by mass, and in addition methyl isobutyl ketone.
24. Diluent type B with boiling point >100 C.
25. No “Corrosive” subsidiary risk label is required for concentrations below 56%.
26. Available oxygen must be ≤7.6%.
27. Formulations derived from distillation of peroxyacetic acid originating from peroxyacetic acid in a concentration of not more than 41% with water, total active oxygen less than or equal to 9.5% (peroxyacetic acid plus hydrogen peroxide).
28. For the purposes of this section, the names “Peroxyacetic acid” and “Peracetic acid” are synonymous.
29. Not subject to the requirements of this subchapter for Division 5.2.
30. Diluent type B with boiling point >130 °C (266 °F).
31. Available oxygen ≤6.7%.

* * * * *

(e) * * *

ORGANIC PEROXIDE IBC TABLE

UN No.	Organic peroxide	Type of IBC	Maximum quantity (liters)	Control temperature	Emergency temperature
3109	ORGANIC PEROXIDE, TYPE F, LIQUID.				
	tert-Butyl cumyl peroxide	31HA1	1000		
	tert-Butyl hydroperoxide, not more than 72% with water	31A	1250		
	tert-Butyl peroxyacetate, not more than 32% in diluent type A	31A	1250		

ORGANIC PEROXIDE IBC TABLE—Continued

UN No.	Organic peroxide	Type of IBC	Maximum quantity (liters)	Control temperature	Emergency temperature
		31HA1	1000		
	tert-Butyl peroxybenzoate, not more than 32% in diluent type A.	31A	1250		
	tert-Butyl peroxy-3,5,5-trimethylhexanoate, not more than 37% in diluent type A.	31A	1250		
		31HA1	1000		
	Cumyl hydroperoxide, not more than 90% in diluent type A	31HA1	1250		
	Dibenzoyl peroxide, not more than 42% as a stable dispersion.	31H1	1000		
	Di-tert-butyl peroxide, not more than 52% in diluent type B	31A	1250		
		31HA1	1000		
	1,1-Di-(tert-Butylperoxy) cyclohexane, not more than 37% in diluent type A.	31A	1250		
	1,1-Di-(tert-butylperoxy) cyclohexane, not more than 42% in diluent type A.	31H1	1000		
	Dicumyl peroxide, less than or equal to 100%	31A	1250		
		31HA1	1000		
	Dilauroyl peroxide, not more than 42%, stable dispersion, in water.	31HA1	1000		
	Isopropyl cumyl hydroperoxide, not more than 72% in diluent type A.	31HA1	1250		
	p-Menthyl hydroperoxide, not more than 72% in diluent type A.	31HA1	1250		
	Peroxyacetic acid, stabilized, not more than 17%	31A	1500		
		31H1	1500		
		31H2	1500		
		31HA1	1500		
	Peroxyacetic acid, with not more than 26% hydrogen peroxide.	31A	1500		
		31HA1	1500		
	Peroxyacetic acid, type F, stabilized	31A	1500		
		31HA1	1500		
3110	ORGANIC PEROXIDE TYPE F, SOLID.				
	Dicumyl peroxide, less than or equal to 100%	31A	2000		
		31H1			
		31HA1			
3119	ORGANIC PEROXIDE, TYPE F, LIQUID, TEMPERATURE CONTROLLED.				
	tert-Amyl peroxypivalate, not more than 32% in diluent type A	31A	1250	+ 10 °C	+ 15 °C
	tert-Butyl peroxy-2-ethylhexanoate, not more than 32% in diluent type B.	31HA1	1000	+ 30 °C	+ 35 °C
		31A	1250	+ 30 °C	+ 35 °C
	tert-Butyl peroxyneodecanoate, not more than 32% in diluent type A.	31A	1250	0 °C	+ 10 °C
	tert-Butyl peroxyneodecanoate, not more than 52%, stable dispersion, in water.	31A	1250	−5 °C	+ 5 °C
	tert-Butyl peroxypivalate, not more than 27% in diluent type B	31HA1	1000	+ 10 °C	+ 15 °C
		31A	1250	+ 10 °C	+ 15 °C
	Di-(4-tert-butylcyclohexyl) peroxydicarbonate, not more than 42%, stable dispersion, in water.	31HA1	1000	+ 30 °C	+ 35 °C
	Dicetyl peroxydicarbonate, not more than 42%, stable dispersion, in water.	31HA1	1000	+ 30 °C	+ 35 °C
	Dicyclohexylperoxydicarbonate, not more than 42% as a stable dispersion, in water.	31A	1250	+ 10 °C	+ 15 °C
	Di-(2-ethylhexyl) peroxydicarbonate, not more than 62%, stable dispersion, in water.	31A	1250	−20 °C	−10 °C
		31HA1	1000	−20 °C	−10 °C
	Diisobutyryl peroxide, not more than 28% as a stable dispersion in water.	31HA1	1000	−20 °C	−10 °C
		31A	1250	−20 °C	−10 °C
	Diisobutyryl peroxide, not more than 42% as a stable dispersion in water.	31HA1	1000	−25 °C	−15 °C
		31A	1250	−25 °C	−15 °C
	Dimyristyl peroxydicarbonate, not more than 42%, stable dispersion, in water.	31HA1	1000	+ 15 °C	+ 20 °C
	Di-(2-neodecanoylperoxyisopropyl) benzene, not more than 42%, stable dispersion, in water.	31A	1250	−15 °C	−5 °C
	Di-(3,5,5-trimethylhexanoyl) peroxide, not more than 52% in diluent type A.	31HA1	1000	+ 10 °C	+ 15 °C
		31A	1250	+ 10 °C	+ 15 °C

ORGANIC PEROXIDE IBC TABLE—Continued

UN No.	Organic peroxide	Type of IBC	Maximum quantity (liters)	Control temperature	Emergency temperature
	Di-(3,5,5-trimethylhexanoyl) peroxide, not more than 52%, stable dispersion, in water.	31A	1250	+ 10 °C	+ 15 °C
	3-Hydroxy-1,1-dimethylbutyl peroxy-neodecanoate, not more than 52%, stable dispersion, in water.	31A	1250	− 15 °C	− 5 °C
	1,1,3,3-Tetramethylbutyl peroxy-2-ethylhexanoate, not more than 67%, in diluent type A.	31HA1	1000	+15 °C	+20 °C
	1,1,3,3-Tetramethylbutyl peroxyneodecanoate, not more than 52%, stable dispersion, in water.	31A	1250	− 5 °C	+ 5 °C
		31HA1	1000	− 5 °C	+ 5 °C

* * * * *

■ 34. In § 173.301b, paragraphs (a)(2), (c)(1), and (g) are revised to read as follows:

§ 173.301b Additional general requirements for shipment of UN pressure receptacles.

(a) * * *

(2) The gases or gas mixtures must be compatible with the UN pressure receptacle and valve materials as prescribed for metallic materials in ISO 11114–1:2012 (IBR, see § 171.7 of this subchapter) and for non-metallic materials in ISO 11114–2:2013 Gas cylinders—Compatibility of cylinder and valve materials with gas contents—Part 2: Non-metallic materials (IBR, see § 171.7 of this subchapter).

* * * * *

(c) * * *

(1) When the use of a valve is prescribed, the valve must conform to the requirements in ISO 10297:2006 (IBR, see § 171.7 of this subchapter). Until December 31, 2020, the manufacture of a valve conforming to the requirements in ISO 10297:2006 (IBR, see § 171.7 of this subchapter) is authorized. Until December 31, 2008, the manufacture of a valve conforming to the requirements in ISO 10297:1999 (IBR, see § 171.7 of this subchapter) is authorized.

* * * * *

(g) *Composite cylinders in underwater use.* A composite cylinder certified to ISO–11119–2 or ISO–11119–3 may not be used for underwater applications unless the cylinder is manufactured in accordance with the requirements for underwater use and is marked ''UW'' as prescribed in § 178.71(q)(18) of this subchapter.

■ 35. In § 173.303, paragraph (f)(1) is revised to read as follows:

§ 173.303 Charging of cylinders with compressed gas in a solution (acetylene).

* * * * *

(f) * * *

(1) UN cylinders and bundles of cylinders are authorized for the transport of acetylene gas as specified in this section.

(i) Each UN acetylene cylinder must conform to ISO 3807:2013:Gas cylinders—Acetylene cylinders—Basic requirements and type testing (IBR, see § 171.7 of this subchapter), have a homogeneous monolithic porous mass filler and be charged with acetone or a suitable solvent as specified in the standard. UN acetylene cylinders must have a minimum test pressure of 52 bar and may be filled up to the pressure limits specified in ISO 3807–2013. The use of UN tubes and MEGCs is not authorized.

(ii) Until December 31, 2020, cylinders conforming to the requirements in ISO 3807–2: Cylinders for acetylene—Basic requirements—Part 2: Cylinders with fusible plugs. (IBR, see § 171.7 of this subchapter), having a homogeneous monolithic porous mass filler and charged with acetone or a suitable solvent as specified in the standard are authorized. UN acetylene cylinders must have a minimum test pressure of 52 bar and may be filled up to the pressure limits specified in ISO 3807–2.

* * * * *

■ 36. In 173.304b, paragraph (b)(5) is added to read as follows:

§ 173.304b Additional requirements for shipment of liquefied compressed gases in UN pressure receptacles.

* * * * *

(b) * * *

(5) For liquefied gases charged with compressed gases, both components—the liquid phase and the compressed gas—have to be taken into consideration in the calculation of the internal pressure in the pressure receptacle. The maximum mass of contents per liter of water capacity shall not exceed 95 percent of the density of the liquid phase at 50 °C (122 °F); in addition, the liquid phase shall not completely fill the pressure receptacle at any temperature up to 60 °C (140 °F). When filled, the internal pressure at 65 °C (149 °F) shall not exceed the test pressure of the pressure receptacles. The vapor pressures and volumetric expansions of all substances in the pressure receptacles shall be considered. The maximum filling limits may be determined using the procedure in (3)(e) of P200 of the UN Recommendations.

* * * * *

■ 37. Section 173.310, is revised to read as follows:

§ 173.310 Exceptions for radiation detectors.

Radiation detectors, radiation sensors, electron tube devices, or ionization chambers, herein referred to as ''radiation detectors,'' that contain only Division 2.2 gases in non-refillable cylinders, are excepted from the specification packaging in this subchapter and, except when transported by air, from labeling and placarding requirements of this subchapter when designed, packaged, and transported as follows:

(a) Radiation detectors must be single-trip, hermetically sealed, welded metal inside containers that will not fragment upon impact.

(b) Radiation detectors must not have a design pressure exceeding 5.00 MPa (725 psig) and a capacity exceeding 405 fluid ounces (731 cubic inches). They must be designed and fabricated with a burst pressure of not less than three times the design pressure if the radiation detector is equipped with a pressure relief device, and not less than four times the design pressure if the detector is not equipped with a pressure relief device.

(c) Radiation detectors must be shipped in a strong outer packaging capable of withstanding a drop test of at least 1.2 meters (4 feet) without breakage of the radiation detector or rupture of the outer packaging. If the radiation detector is shipped as part of other equipment, the equipment must be packaged in strong outer packaging or the equipment itself must provide an equivalent level of protection.

(d) Emergency response information accompanying each shipment and available from each emergency response telephone number for radiation detectors must identify those receptacles that are not fitted with a pressure relief device and provide appropriate guidance for exposure to fire.

(e) Transport in accordance with this section must be noted on the shipping paper.

(f) Radiation detectors, including detectors in radiation detection systems, are not subject to any other requirements of this subchapter if the detectors meet the requirements in paragraphs (a) through (d) of this section and the capacity of detector receptacles does not exceed 50 ml (1.69 fluid ounces).

■ 38. In § 173.335, paragraph (a) is revised to read as follows:

§ 173.335 Chemical under pressure n.o.s.

(a) *General requirements.* A cylinder filled with a chemical under pressure must be offered for transportation in accordance with the requirements of this section and § 172.301 of this subchapter. In addition, a DOT specification cylinder must meet the requirements in §§ 173.301a, 173.302, 173.302a, and 173.305, as applicable. UN pressure receptacles must meet the requirements in §§ 173.301b, 173.302b, and 173.304b, as applicable. Where more than one section applies to a cylinder, the most restrictive requirements must be followed.

* * * * *

PART 175—CARRIAGE BY AIRCRAFT

■ 39. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81 and 1.97.

■ 40. In § 175.10, revise paragraph (a)(7) to read as follows:

§ 175.10 Exceptions for passengers, crewmembers, and air operators.

* * * * *

(a) * * *

(7) A small medical or clinical mercury thermometer for personal use, when carried in a protective case in checked baggage.

* * * * *

■ 41. Section 175.25 is revised to read as follows:

§ 175.25 Passenger notification system.

(a) Each person who engages in for hire air transportation of passengers must effectively inform passengers about hazardous materials that passengers are forbidden to transport on aircraft and must accomplish this through the development, implementation, and maintenance of a passenger notification system.

(b) *Passenger notification system requirements.* The passenger notification system required by paragraph (a) of this section must ensure that:

(1) A passenger is presented with information required under paragraph (a) of this section at the point of ticket purchase or, if this is not practical, in another way prior to boarding pass issuance;

(2) A passenger is presented with information required under paragraph (a) of this section at the point of boarding pass issuance (*i.e.*, check-in), or when no boarding pass is issued, prior to boarding the aircraft;

(3) A passenger, where the ticket purchase and/or boarding pass issuance can be completed by a passenger without the involvement of another person, acknowledges that they have been presented with the information required under paragraph (a) of this section; and

(4) A passenger is presented with information required under paragraph (a) of this section at each of the places at an airport where tickets are issued, boarding passes are issued, passenger baggage is dropped off, aircraft boarding areas are maintained, and at any other location where boarding passes are issued and/or checked baggage is accepted. This information must include visual examples of forbidden hazardous materials.

(c) *Aircraft operator manual requirements.* For certificate holders under 14 CFR parts 121 and 135, procedures and information necessary to allow personnel to implement and maintain the passenger notification system required in paragraphs (a) and (b) of this section must be described in an operations manual and/or other appropriate manuals in accordance with 14 CFR parts 121 or 135.

■ 42. In § 175.33, revise paragraph (a)(3) to read as follows:

§ 175.33 Shipping paper and notification of pilot-in-command.

* * * * *

(a) * * *

(3) The net quantity or gross weight, as applicable, for each package except those containing Class 7 (radioactive) materials. For a shipment consisting of multiple packages containing hazardous materials bearing the same proper shipping name and identification number, only the total quantity and an indication of the quantity of the largest and smallest package at each loading location need to be provided. For consumer commodities, the information provided may be either the gross mass of each package or the average gross mass of the packages as shown on the shipping paper;

* * * * *

■ 43. Section 175.900 is revised to read as follows:

§ 175.900 Handling requirements for carbon dioxide, solid (dry ice).

Carbon dioxide, solid (dry ice) when shipped by itself or when used as a refrigerant for other commodities, may be carried only if the operator has made suitable arrangements based on the aircraft type, the aircraft ventilation rates, the method of packing and stowing, whether animals will be carried on the same flight and other factors. The operator must ensure that the ground staff is informed that the dry ice is being loaded or is on board the aircraft. For arrangements between the shipper and operator, see § 173.217 of this subchapter. Where dry ice is contained in a unit load device (ULD) prepared by a single shipper in accordance with § 173.217 of this subchapter and the operator after the acceptance adds additional dry ice, the operator must ensure that the information provided to the pilot-in-command and the marking on the ULD when used as a packaging reflects that revised quantity of dry ice.

PART 176—CARRIAGE BY VESSEL

■ 44. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 45. In § 176.83, paragraph (a)(4)(ii) is revised to read as follows:

§ 176.83 Segregation.

(a) * * *

(4) * * *

(ii) Between hazardous materials of different classes which comprise a group of substances that do not react dangerously with each other. The following materials are grouped by compatibility:

(A) Hydrogen peroxide, aqueous solutions *with not less than 8 percent but less than 20 percent hydrogen peroxide (stabilized as necessary);* Hydrogen peroxide, aqueous solutions *with not less than 20 percent but not more than 40 percent hydrogen peroxide;* Hydrogen peroxide, aqueous solutions *with more than 40 percent but not more than 60 percent hydrogen peroxide;* Hydrogen peroxide and peroxyacetic acid mixtures, stabilized *with acids, water and not more than 5* *percent peroxyacetic acid;* Organic peroxide type D, liquid; Organic peroxide type E, liquid; Organic peroxide type F, liquid;

(B) Dichlorosilane, Silicon tetrachloride, and Trichlorosilane; and

(C) Organometallic substance, solid, pyrophoric, Organometallic substance, liquid, pyrophoric, Organometallic substance, solid, pyrophoric, water-reactive, Organometallic substance, liquid, pyrophoric, water-reactive, Organometallic substance, solid, water-reactive, Organometallic substance, solid, water-reactive, flammable, Organometallic substance, solid, water-reactive, self-heating, Organometallic substance, liquid, water-reactive, Organometallic substance, liquid, water-reactive, flammable, and Organometallic substance, solid, self-heating.

* * * * *

■ 46. In § 176.84(b), table provisions 149 and 150 are added:

§ 176.84 Other requirements for stowage, cargo handling, and segregation for cargo vessels and passenger vessels.

(b) * * *

Code	Provisions
* * *	* * * *
149	For engines or machinery containing fuels with flash point equal or greater than 23 °C (73.4 °F) , stowage Category A.
150	For uranium metal pyrophoric and thorium metal pyrophoric stowage, category D applies.
* * *	* * * *

* * * * *

■ 47. Section 176.905 is revised as follows:

§ 176.905 Stowage of vehicles.

(a) A vehicle powered by an internal combustion engine, a fuel cell, batteries or a combination thereof is subject to the following requirements when carried as cargo on a vessel:

(1) Before being loaded on a vessel, each vehicle must be inspected for signs of leakage from batteries, engines, fuel cells, compressed gas cylinders or accumulators, or fuel tank(s) when applicable, and any identifiable faults in the electrical system that could result in short circuit or other unintended electrical source of ignition. A vehicle showing any signs of leakage or electrical fault may not be transported.

(2) For flammable liquid powered vehicles, the fuel tank(s) containing the flammable liquid, may not be more than one fourth full and the flammable liquid must not exceed 250 L (66 gal) unless otherwise approved by the Associate Administrator.

(3) For flammable gas powered vehicles, the fuel shut-off valve of the fuel tank(s) must be securely closed.

(4) For vehicles with batteries installed, the batteries shall be protected from damage, short circuit, and accidental activation during transport. Except for vehicles with prototype or low production lithium batteries (see § 173.185(d) of this subchapter) securely installed, each lithium battery must be of a type that has successfully passed each test in the UN Manual of Tests and Criteria (IBR, see § 171.7 of this subchapter), as specified in § 173.185(a) of this subchapter, unless approved by the Associate Administrator. Where a lithium battery installed in a vehicle is damaged or defective, the battery must be removed and transported according to § 173.185(f) of this subchapter, unless otherwise approved by the Associate Administrator.

(5) Whenever possible, each vehicle must be stowed to allow for its inspection during transportation.

(6) Vehicles may be refueled when necessary in the hold of a vessel in accordance with § 176.78.

(b) All equipment used for handling vehicles must be designed so that the fuel tank and the fuel system of the vehicle are protected from stress that might cause rupture or other damage incident to handling.

(c) Two hand-held, portable, dry chemical fire extinguishers of at least 4.5 kg (10 pounds) capacity each must be separately located in an accessible location in each hold or compartment in which any vehicle is stowed.

(d) "NO SMOKING" signs must be conspicuously posted at each access opening to the hold or compartment.

(e) Each portable electrical light, including a flashlight, used in the stowage area must be an approved, explosion-proof type. All electrical connections for any light must be made to outlets outside the space in which any vehicle is stowed.

(f) Each hold or compartment must be ventilated and fitted with an overhead water sprinkler system or fixed fire extinguisher system.

(g) Each hold or compartment must be equipped with a smoke or fire detection system capable of alerting personnel on the bridge.

(h) All electrical equipment in the hold or compartment other than fixed explosion-proof lighting must be disconnected from its power source at a location outside the hold or compartment during the handling and transportation of any vehicle. Where the disconnecting means is a switch or circuit breaker, it must be locked in the open position until all vehicles have been removed.

(i) *Exceptions.* A vehicle is not subject to the requirements of this subchapter if any of the following are met:

(1) The vehicle is stowed in a hold or compartment designated by the administration of the country in which the vessel is registered as specially designed and approved for vehicles and there are no signs of leakage from the battery, engine, fuel cell, compressed gas cylinder or accumulator, or fuel tank, as appropriate. For vehicles with batteries connected and fuel tanks containing gasoline transported by U.S. vessels, see 46 CFR 70.10–1 and 90.10–38;

(i) For vehicles powered solely by lithium batteries and hybrid electric vehicles powered by both an internal combustion engine and lithium metal or ion batteries offered in accordance with this paragraph, the lithium batteries, except for prototype or those produced in low production, must be of a type that has successfully passed each test in the UN Manual of Tests and Criteria (IBR, see § 171.7 of this subchapter), as specified in § 173.185(a) of this subchapter. Where a lithium battery installed in a vehicle is damaged or defective, the battery must be removed.

(ii) [Reserved].

(2) The vehicle is powered by a flammable liquid that has a flashpoint of 38 °C (100 °F) or above, the fuel tank contains 450 L (119 gallons) of fuel or less, there are no leaks in any portion of the fuel system, and installed batteries are protected from short circuit;

(3) The vehicle is powered by a flammable liquid fuel that has a flashpoint less than 38 °C (100 °F), the fuel tank is empty, and installed batteries are protected from short circuit. Vehicles are considered to be empty of flammable liquid fuel when the fuel tank has been drained and the

vehicles cannot be operated due to a lack of fuel. Engine components such as fuel lines, fuel filters and injectors do not need to be cleaned, drained or purged to be considered empty. The fuel tank does not need to be cleaned or purged;

(4) The vehicle is powered by a flammable gas (liquefied or compressed), the fuel tanks are empty and the positive pressure in the tank does not exceed 2 bar (29 psig), the fuel shut-off or isolation valve is closed and secured, and installed batteries are protected from short circuit;

(5) The vehicle is solely powered by a wet or dry electric storage battery or a sodium battery, and the battery is protected from short circuit; or

(6) The vehicle is powered by a fuel cell engine, the engine is protected from inadvertent operation by closing fuel supply lines or by other means, and the fuel supply reservoir has been drained and sealed.

(j) Except as provided in § 173.220(f) of this subchapter, the provisions of this subchapter do not apply to items of equipment such as fire extinguishers, compressed gas accumulators, airbag inflators and the like which are installed in the vehicle if they are necessary for the operation of the vehicle, or for the safety of its operator or passengers.

■ 48. Section 176.906 is added to read as follows:

§ 176.906 Stowage of engines and machinery.

(a) Any engine or machinery powered by internal combustion systems, with or without batteries installed, is subject to the following requirements when carried as cargo on a vessel:

(1) Before being loaded on a vessel, each engine or machinery must be inspected for fuel leaks and identifiable faults in the electrical system that could result in short circuit or other unintended electrical source of ignition. Engines or machinery showing any signs of leakage or electrical fault may not be transported.

(2) The fuel tanks of an engine or machinery powered by liquid fuel may not be more than one-fourth full.

(3) Whenever possible, each engine or machinery must be stowed to allow for its inspection during transportation.

(b) All equipment used for handling engines or machinery must be designed so that the fuel tank and the fuel system of the engines or machinery are protected from stress that might cause rupture or other damage incident to handling.

(c) Two hand-held, portable, dry chemical fire extinguishers of at least 4.5 kg (10 pounds) capacity each must be separately located in an accessible location in each hold or compartment in which engine or machinery is stowed.

(d) "NO SMOKING" signs must be conspicuously posted at each access opening to the hold or compartment.

(e) Each portable electrical light, including a flashlight, used in the stowage area must be an approved, explosion-proof type. All electrical connections for any light must be made to outlets outside the space in which any engine or machinery is stowed.

(f) Each hold or compartment must be ventilated and fitted with an overhead water sprinkler system or fixed fire extinguisher system.

(g) Each hold or compartment must be equipped with a smoke or fire detection system capable of alerting personnel on the bridge.

(h) All electrical equipment in the hold or compartment other than fixed explosion-proof lighting must be disconnected from its power source at a location outside the hold or compartment during the handling and transportation of any engine or machinery. Where the disconnecting means is a switch or circuit breaker, it must be locked in the open position until all engines or machinery has been removed.

(i) *Exceptions.* (1) An engine or machinery is not subject to the requirements of this subchapter if the engine or machinery is empty of liquid or gaseous fuel(s), does not contain other dangerous goods, and installed batteries are protected from short circuit. An engine and machinery is considered to be empty of fuel when:

(i) For liquid fuels, the liquid fuel tank has been drained and the mechanical equipment cannot be operated due to a lack of fuel. Engine and machinery components such as fuel lines, fuel filters and injectors do not need to be cleaned, drained or purged to be considered empty of liquid fuels. In addition, the liquid fuel tank does not need to be cleaned or purged;

(ii) For gaseous fuels, the gaseous fuel tanks are empty of liquid (for liquefied gases), the positive pressure in the tanks does not exceed 2 bar (29 psig) and the fuel shut-off or isolation valve is closed and secured; or

(iii) The engine or machinery is powered by a fuel cell engine and the engine is protected from inadvertent operation by closing fuel supply lines or by other means, and the fuel supply reservoir has been drained and sealed.

(2) An engine or machinery is not subject to the requirements of this subchapter except for § 173.185 of this subchapter and the vessel stowage provisions of column 10 of table § 172.101 of this subchapter, if the following are met:

(i) Any valves or openings (*e.g.* venting devices) for liquid fuels must be closed during transport;

(ii) The engines or machinery must be oriented to prevent inadvertent leakage of dangerous goods and secured by means capable of restraining the engines or machinery to prevent any movement during transport which would change the orientation or cause them to be damaged;

(iii) For UN 3528 and UN 3530:

(A) Where the engine or machinery contains more than 60 L (16 Gal) of liquid fuel and has a capacity of not more than 450 L (119 Gal), it shall be labelled in accordance with subpart E of part 172 of this subchapter;

(B) Where the engine or machinery contains more than 60 L of liquid fuel and has a capacity of more than 450 L (119 Gal) but not more than 3,000 L (793 Gal), it shall be labeled on two opposing sides in accordance with § 172.406(e) of this subchapter;

(C) Where the engine or machinery contains more than 60 L (16 Gal) of liquid fuel and has a capacity of more than 3,000 L (793 Gal), it shall be placarded on two opposing sides in accordance with subpart F of part 172 of this subchapter; and

(D) For UN 3530 the marking requirements of § 172.322 of this subchapter also apply.

(iv) For UN 3529:

(A) Where the fuel tank of the engine or mechanical equipment has a water capacity of not more than 450 L (119 Gal), the labeling requirements of subpart E of part 172 of this subchapter shall apply;

(B) Where the fuel tank of the mechanical equipment has a water capacity of more than 450 L (119 Gal) but not more than 1,000 L (264 Gal), it shall be labeled on two opposing sides in accordance with § 172.406(e) of this subchapter;

(C) Where the fuel tank of the mechanical equipment has a water capacity of more than 1,000 L (264 Gal), it shall be placarded on two opposing sides in accordance with subpart F of this subchapter.

(v) Except for engines or machinery offered in accordance with paragraph (i)(1) of this section, a shipping paper prepared in accordance with part 172 of this subchapter is required and shall contain the following additional statement "Transport in accordance with § 176.906." For transportation in accordance with the IMDG Code (IBR, see § 171.7 of this subchapter) the following alternative statement is authorized "Transport in accordance with special provision 363."

(j) Except as provided in § 173.220(f) of this subchapter, the provisions of this subchapter do not apply to items of equipment such as fire extinguishers, compressed gas accumulators, airbag inflators and the like which are installed in the engine or machinery if they are necessary for the operation of the engine or machinery, or for the safety of its operator or passengers.

PART 178—SPECIFICATIONS FOR PACKAGINGS

■ 49. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 50. In § 178.71:
■ a. Revise paragraph (d)(2);
■ b. Add paragraph (g)(4),
■ c. Revise paragraphs (h), (k)(2), (l), and (o)(2);
■ d. Add paragraphs (q)(20) and (21); and
■ e. Revise paragraph (r).

The revisions and additions read as follows:

§ 178.71 Specifications for UN pressure receptacles.

* * * * *

(d) * * *

(2) Service equipment must be configured or designed to prevent damage that could result in the release of the pressure receptacle contents during normal conditions of handling and transport. Manifold piping leading to shut-off valves must be sufficiently flexible to protect the valves and the piping from shearing or releasing the pressure receptacle contents. The filling and discharge valves and any protective caps must be secured against unintended opening. The valves must conform to ISO 10297:2014 Gas cylinders—Cylinder valves—Specification and type testing, or ISO 13340 (IBR, see § 171.7 of this subchapter) for non-refillable pressure receptacles, and be protected as specified in § 173.301b(f) of this subchapter. Until December 31, 2020, the manufacture of a valve conforming to the requirements in ISO 10297:2006 (IBR, see § 171.7 of this subchapter) is authorized. Until December 31, 2008, the manufacture of a valve conforming to the requirements in ISO 10297:1999 (IBR, see § 171.7 of this subchapter) is authorized.

* * * * *

(g) * * *

(4) ISO 9809–4:2014 Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 4: Stainless steel cylinders with an Rm value of less than 1 100 MPa (IBR, see § 171.7 of this subchapter).

(h) *Design and construction requirements for UN refillable seamless aluminum alloy cylinders.* In addition to the general requirements of this section, UN refillable seamless aluminum cylinders must conform to ISO 7866:2012 Gas cylinders—Refillable seamless aluminium alloy gas cylinders—Design, construction and testing (including Technical Corrigendum 1) (IBR, see § 171.7 of this subchapter). Until December 31, 2020, cylinders conforming to the requirements in ISO 7866: Gas cylinders—Refillable seamless aluminum alloy gas cylinders—Design, construction and testing (IBR, see § 171.7 of this subchapter) are authorized. The use of Aluminum alloy 6351–T6 or equivalent is prohibited.

* * * * *

(k) * * *

(2) The porous mass in an acetylene cylinder must conform to ISO 3807:2013: Gas cylinders—Acetylene cylinders—Basic requirements and type testing (IBR, see § 171.7 of this subchapter). Until December 31, 2020, the manufacture of a cylinder conforming to the requirements in ISO 3807–2: Cylinders for acetylene—Basic requirements—Part 2: Cylinders with fusible plugs (IBR, see § 171.7 of this subchapter) is authorized.

(l) *Design and construction requirements for UN composite cylinders and tubes.* (1) In addition to the general requirements of this section, UN composite cylinders and tubes must be designed for a design life of not less than 15 years. Composite cylinders and tubes with a design life longer than 15 years must not be filled after 15 years from the date of manufacture, unless the design has successfully passed a service life test program. The service life test program must be part of the initial design type approval and must specify inspections and tests to demonstrate that cylinders manufactured accordingly remain safe to the end of their design life. The service life test program and the results must be approved by the competent authority of the country of approval that is responsible for the initial approval of the cylinder design. The service life of a composite cylinder or tube must not be extended beyond its initial approved design life. Additionally, composite cylinders and tubes must conform to the following ISO standards, as applicable:

(i) ISO 11119–1:2012 Gas cylinders—Refillable composite gas cylinders and tubes—Design, construction and testing—Part 1: Hoop wrapped fibre reinforced composite gas cylinders and tubes up to 450 l (IBR, see § 171.7 of this subchapter). Until December 31, 2020, cylinders conforming to the requirements in ISO 11119–1(E), Gas cylinders—Gas cylinders of composite construction—Specification and test methods—Part 1: Hoop-wrapped composite gas cylinders, First edition, May 2002 (IBR, see § 171.7 of this subchapter) are authorized.

(ii) ISO 11119–2:2012 Gas cylinders—Refillable composite gas cylinders and tubes—Design, construction and testing—Part 2: Fully wrapped fibre reinforced composite gas cylinders and tubes up to 450 l with load-sharing metal liners (including Amendment 1:2014) (IBR, see § 171.7 of this subchapter). Until December 31, 2020, cylinders conforming to the requirements in ISO 11119–2(E), Gas cylinders—Gas cylinders of composite construction—Specification and test methods—Part 2: Fully wrapped fibre reinforced composite gas cylinders with load-sharing metal liners, First edition, May 2002 (IBR, see § 171.7 of this subchapter) are authorized.

(iii) ISO 11119–3:2013 Gas cylinders—Refillable composite gas cylinders and tubes—Design, construction and testing—Part 3: Fully wrapped fibre reinforced composite gas cylinders and tubes up to 450 l with non-load-sharing metallic or non-metallic liners (IBR, see § 171.7 of this subchapter). Until December 31, 2020, cylinders conforming to the requirements in ISO 11119–3(E), Gas cylinders of composite construction—Specification and test methods—Part 3: Fully wrapped fibre reinforced composite gas cylinders with non-load-sharing metallic or non-metallic liners, First edition, September 2002, (IBR, see § 171.7 of this subchapter) are authorized.

(iv) ISO 11515:2013 Gas cylinders—Refillable composite reinforced tubes of water capacity between 450 L and 3000 L—Design, construction and testing (IBR, see § 171.7 of this subchapter).

(2) ISO 11119–2 and ISO 11119–3 gas cylinders of composite construction manufactured in accordance with the requirements for underwater use must bear the "UW" mark.

* * * * *

(o) * * *

(2) ISO 11114–2:2013 Gas cylinders—Compatibility of cylinder and valve materials with gas contents—Part 2: Non-metallic materials (IBR, see § 171.7 of this subchapter).

* * * * *

(q) * * *

(20) For composite cylinders and tubes having a limited design life, the letters "FINAL" followed by the design life shown as the year (four digits) followed by the month (two digits) separated by a slash (*i.e.* "/").

(21) For composite cylinders and tubes having a limited design life greater than 15 years and for composite cylinders and tubes having non-limited design life, the letters "SERVICE" followed by the date 15 years from the date of manufacture (initial inspection) shown as the year (four digits) followed by followed by the month (two digits) separated by a slash (*i.e.* "/").

(r) *Marking sequence.* The marking required by paragraph (q) of this section must be placed in three groups as shown in the example below:

(1) The top grouping contains manufacturing marks and must appear consecutively in the sequence given in paragraphs (q)(13) through (19) of this section.

(2) The middle grouping contains operational marks described in paragraphs (q)(6) through (11) of this section.

(3) The bottom grouping contains certification marks and must appear consecutively in the sequence given in paragraphs (q)(1) through (5) of this section.

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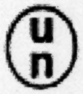
EXAMPLE TO § 178.71

(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)	(20)	(21)
25E	USA	765432	H			UW	FINAL 2XXX/XX	FINAL 2XXX/XX	SERVICE 2XXX/XX

(10)	(6)	(7)	(8)	(11)	(9)
PW200	PH300BAR	RCPXXXBAR	62.1 KG	50L	5.8MM

(1)	(2)	(3)	(4)	(5)
	ISO 9809-1	USA/MXXXX	IB	2005/12

BILLING CODE 4910–60–C

■ 51. In § 178.75, existing paragraph (d)(3)(iv) is redesignated as (d)(3)(v), and new paragraph (d)(3)(iv) is added to read as follows:

§ 178.75 Specifications for MEGCs.

(d) * * *

(3) * * *

(iv) ISO 9809–4:2014 Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 4: Stainless steel cylinders with an Rm value of less than 1 100 MPa (IBR, see § 171.7 of this subchapter).

* * * * *

■ 52. In § 178.1015 paragraph (f) is revised to read as follows:

§ 178.1015 General Flexible Bulk Container standards.

* * * * *

(f) A venting device must be fitted to Flexible Bulk Containers intended to transport hazardous materials that may develop dangerous accumulation of gases within the Flexible Bulk Container. Any venting device must be designed so that external foreign substances or the ingress of water are prevented from entering the Flexible Bulk Container through the venting device under conditions normally incident to transportation.

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

■ 53. The authority citation for part 180 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 54. In § 180.205, paragraph (c) is revised to read as follows:

§ 180.205 General requirements for requalification of specification cylinders.

* * * * *

(c) *Periodic requalification of cylinders.* Each cylinder bearing a DOT specification marking must be requalified and marked as specified in the Requalification Table in this subpart. Each cylinder bearing a DOT special permit number must be requalified and marked in conformance with this section and the terms of the applicable special permit. Each CRC, BTC, CTC or TC cylinder must be requalified and marked as specified in the Transport Canada TDG Regulations (IBR, see § 171.7 of this subchapter). No cylinder may be filled with a hazardous material and offered for transportation in commerce unless that cylinder has been successfully requalified and marked in accordance with this subpart. A cylinder may be requalified at any time during or before the month and year that the requalification is due. However, a cylinder filled before the requalification becomes due may remain in service until it is emptied. A cylinder with a specified service life may not be refilled and offered for transportation after its authorized service life has expired.

(1) Each cylinder that is requalified in accordance with the requirements specified in this section must be marked in accordance with § 180.213, or in the case of a CRC, BTC, CTC or TC cylinder, in accordance with the requirements of the Transport Canada TDG Regulations.

(2) Each cylinder that fails requalification must be:

(i) Rejected and may be repaired or rebuilt in accordance with § 180.211 or § 180.212, as appropriate; or

(ii) Condemned in accordance with paragraph (i) of this section.

(3) For DOT specification cylinders, the marked service pressure may be changed upon approval of the Associate Administrator and in accordance with written procedures specified in the approval.

(4) For a specification 3, 3A, 3AA, 3AL, 3AX, 3AXX, 3B, 3BN, or 3T cylinder filled with gases in other than Division 2.2, from the first requalification due on or after December 31, 2003, the burst pressure of a CG–1, CG–4, or CG–5 pressure relief device must be at test pressure with a tolerance of plus zero to minus 10%. An additional 5% tolerance is allowed when a combined rupture disc is placed inside a holder. This requirement does not apply if a CG–2, CG–3 or CG–9 thermally activated relief device or a CG–7 reclosing pressure valve is used on the cylinder.

* * * * *

■ 55. In § 180.207, paragraph (d)(3) is revised to read as follows:

§ 180.207 Requirements for requalification of UN pressure receptacles.

* * * * *

(d) * * *

(3) Dissolved acetylene UN cylinders: Each dissolved acetylene cylinder must be requalified in accordance with ISO 10462:2013 Gas cylinders—Acetylene cylinders—Periodic inspection and maintenance (IBR, see § 171.7 of this subchapter). Until December 31, 2018 requalification may be done in accordance with ISO 10462 (E), Gas cylinders—Transportable cylinders for dissolved acetylene—Periodic inspection and maintenance, Second edition, February 2005 (IBR, see § 171.7 of this subchapter). The porous mass and the shell must be requalified no sooner than 3 years, 6 months, from the date of manufacture. Thereafter, subsequent requalifications of the porous mass and shell must be performed at least once every ten years.

* * * * *

■ 56. In § 180.413, paragraph (a)(1)(iii) is added and the introductory text of paragraph (b) is revised to read as follows:

§ 180.413 Repair, modification, stretching, rebarrelling, or mounting of specification cargo tanks.

(a) * * *

(1) * * *

(iii) A repair, as defined in § 180.403, of a DOT specification cargo tank used for the transportation of hazardous materials in the United States may be performed by a facility in Canada in accordance with the Transport Canada TDG Regulations (IBR, see § 171.7 of this subchapter) provided:

(A) The facility holds a valid Certificate of Authorization from a provincial pressure vessel jurisdiction for repair;

(B) The facility is registered in accordance with the Transport Canada TDG Regulations to repair the corresponding TC specification; and

(C) All repairs are performed using the quality control procedures used to obtain the Certificate of Authorization.

(b) *Repair.* The suitability of each repair affecting the structural integrity or lading retention capability of the cargo tank must be determined by the testing required either in the applicable manufacturing specification or in § 180.407(g)(1)(iv). Except for a repair performed by a facility in Canada in accordance with paragraph (a)(1)(iii) of this section, each repair of a cargo tank involving welding on the shell or head must be certified by a Registered Inspector. The following provisions apply to specific cargo tank repairs:

* * * * *

■ 57. In § 180.605, paragraph (g)(1) is revised to read as follows:

§ 180.605 Requirements for periodic testing, inspection and repair of portable tanks.

* * * * *

(g) * * *

(1) The shell is inspected for pitting, corrosion, or abrasions, dents, distortions, defects in welds or any other conditions, including leakage, that might render the portable tank unsafe for transportation. The wall thickness must be verified by appropriate measurement if this inspection indicates a reduction of wall thickness;

* * * * *

Issued in Washington, DC, on August 23, 2016, under authority delegated in 49 CFR 1.97.

William Schoonover,

Acting Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2016–20580 Filed 9–6–16; 8:45 am]

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Part III

Department of the Interior

Bureau of Safety and Environmental Enforcement

30 CFR Part 250
Oil and Gas and Sulfur Operations on the Outer Continental Shelf—Oil and Gas Production Safety Systems; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

30 CFR Part 250

[Docket ID: BSEE–2012–0005; 16XE1700DX EX1SF0000.DAQ000 EEEE500000]

RIN 1014–AA10

Oil and Gas and Sulfur Operations on the Outer Continental Shelf—Oil and Gas Production Safety Systems

AGENCY: Bureau of Safety and Environmental Enforcement (BSEE), Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Safety and Environmental Enforcement (BSEE) is amending and updating the regulations regarding oil and natural gas production safety on the Outer Continental Shelf (OCS) by addressing issues such as: Safety and pollution prevention equipment design and maintenance, production safety systems, subsurface safety devices, and safety device testing. The rule differentiates the requirements for operating dry tree and subsea tree production systems and divides the current BSEE regulations regarding oil and gas production safety systems into multiple sections to make the regulations easier to read and understand. The changes in this rule are necessary to improve human safety, environmental protection, and regulatory oversight of critical equipment involving production safety systems.

DATES: This rule becomes effective on November 7, 2016. Compliance with certain provisions of the final rule, however, will be deferred until the times specified in those provisions and as described in part II.E of this document.

The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of November 7, 2016.

FOR FURTHER INFORMATION CONTACT: Amy White, BSEE, Office of Offshore Regulatory Programs, Regulations Development Section, at 571–230–2475 or at *regs@bsee.gov.*

SUPPLEMENTARY INFORMATION:

Executive Summary

This rule amends and updates BSEE's regulations for oil and gas production safety systems. The regulations (30 CFR part 250, subpart H) have not, until now, undergone a major revision since they were first published in 1988. Since that time, much of the oil and gas production on the OCS has moved into deeper waters and the regulations have not kept pace with the technological advancements.

These regulations address issues such as production safety systems, subsurface safety devices, safety device testing, and production processing systems and areas. These systems play a critical role in protecting workers and the environment. In this final rule, BSEE has made the following changes to subpart H:

- Restructured subpart H to have shorter, easier-to-read sections and clearer, more descriptive headings.
- Updated and improved safety and pollution prevention equipment (SPPE) design, maintenance, and repair requirements in order to increase the overall level of certainty that this equipment will perform as intended, including in emergency situations.
- Expanded the regulations to differentiate the requirements for operating dry tree and subsea tree production systems on the OCS.
- Incorporated by reference new industry standards and update the previous partial incorporation of other standards to require compliance with the complete standards.
- Added new requirements for firefighting systems, shutdown valves and systems, valve closure and leakage, and high pressure/high temperature (HPHT) well equipment.
- Rewrote the subpart in plain language.

In addition to revising subpart H, we are revising the existing regulation (§ 250.107(c)) that requires the use of best available and safest technology (BAST) to follow more closely the Outer Continental Shelf Lands Act's (OCSLA, or the Act) statutory language regarding BAST.

List of Acronyms and References

List of Acronyms and References	
The Act	Outer Continental Shelf Lands Act
AIV	alternate isolation valve
ANSI	American National Standards Institute
API	American Petroleum Institute
APM	Application for Permit to Modify
ASME	American Society of Mechanical Engineers
BAST	Best available and safest technology
BOEM	Bureau of Ocean Energy Management
BOPs	Blowout Preventers
BSDV	Boarding shutdown valves
BSEE	Bureau of Safety and Environmental Enforcement
CSU	column-stabilized-unit
CVA	certified verification agent
DOI	Department of the Interior
DPP	Development and Production Plan
DWOP	Deepwater Operations Plan
E.O.	Executive Order
ESD	emergency shutdown
FPS	floating production systems
FPSO	floating production, storage, and offloading facility
FSV	flow safety valves
GLIV	gas-lift isolation valve
GOM	Gulf of Mexico
H_2S	hydrogen sulfide
HP	high pressure
HPHT	high pressure high temperature
INCs	Incidents of noncompliance
ISO	International Organization for Standardization
IVA	Independent verification agent
LP	low pressure
LSH	level safety high
MAWP	Maximum allowable working pressure
MMS	Minerals Management Service
MOAs	Memoranda of Agreement
MODU	mobile offshore drilling unit
MOU	Memorandum of Understanding
NAE	National Academy of Engineering
NPRM	Notice of Proposed Rulemaking
NTL	Notices to Lessees and Operators
NTTAA	National Technology Transfer and Advancement Act
OESC	Ocean Energy Safety Advisory Committee
OFR	Office of the Federal Register
OIRA	Office of Information and Regulatory Affairs
OMB	Office of Management and Budget
OCS	Outer Continental Shelf
OCSLA	Outer Continental Shelf Lands Act
P&ID	piping and instrumentation diagram
PE	Professional Engineer
PLC	programmable logic controller
PRA	Paperwork Reduction Act

PSH	pressure safety high
PSHL	pressure safety high and low
psi	Pounds per square inch
psia	pounds per square inch absolute
psig	pounds per square inch gauge
PSL	pressure safety low
PSV	pressure safety valve
RFA	Regulatory Flexibility Act
RP	Recommended Practice
SBA	Small Business Administration
SBREFA	Small Business Regulatory Enforcement Fairness Act
SAFD	safety analysis flow diagram
SDV	shutdown valve
Secretary	Secretary of the Interior
SEMS	Safety and Environmental Management Systems
SIL	safety integrity level
SWRI	Southwest Research Institute
Spec.	Specification
SPPE	Safety and Pollution Prevention Equipment
SSSV	Subsurface safety valve
SSV	surface safety valve
TLPs	tension-leg platforms
TSE	temperature safety element
TSH	temperature safety high
USCG	U.S. Coast Guard
USV	Underwater safety valve
VRU	vapor recovery unit
WI	water injection
WISDV	water injection shutdown valve
WIV	water injection valve

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I. Background

A. BSEE's Statutory and Regulatory Authority

OCSLA, 43 U.S.C. 1331 *et seq.,* was first enacted in 1953, and substantially amended in 1978, when Congress established a National policy of making the OCS "available for expeditious and orderly development, subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other National needs." (43 U.S.C. 1332(3).) In addition, Congress emphasized the need to develop OCS mineral resources in a safe manner "by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health." (43 U.S.C. 1332(6).) The Secretary of the Interior (Secretary) administers the OCSLA provisions relating to the leasing of the OCS and regulation of mineral exploration and development operations on those leases. The Secretary is authorized to prescribe "such rules and regulations as may be necessary to carry out [OCSLA's] provisions . . . and may at any time prescribe and amend such rules and regulations as [s]he determines to be necessary and proper in order to provide for the prevention of waste and conservation of the natural resources of the [OCS] . . ." and that "shall, as of their effective date, apply to all operations conducted under a lease issued or maintained under the provisions of [OCSLA]." (43 U.S.C. 1334(a).)

The Secretary delegated most of the responsibilities under OCSLA to BSEE and the Bureau of Ocean Energy Management (BOEM), both of which are charged with administering and regulating aspects of the Nation's OCS oil and gas program. BSEE and BOEM work to promote safety, protect the environment, and conserve offshore resources. BSEE adopts regulations and performs offshore regulatory oversight and enforcement. BSEE's regulatory oversight includes, among other things, evaluating drilling permits, and conducting inspections to ensure compliance with applicable laws, regulations, lease terms, and approved plans and permits.

B. Incorporation by Reference of Industry Standards

BSEE frequently uses standards (*e.g.*, codes, Specifications (Specs.), and Recommended Practices (RPs)) developed through a consensus process, facilitated by standards development organizations and with input from the oil and gas industry, as a means of establishing requirements for activities on the OCS. BSEE may incorporate these standards into its regulations by reference without republishing the standards in their entirety in regulations. The legal effect of incorporation by reference is that the incorporated standards become regulatory requirements. This incorporated material, like any other regulation, has the force and effect of law, and operators, lessees and other regulated parties must comply with the documents incorporated by reference in the regulations. BSEE currently incorporates by reference over 100 consensus standards in its regulations. (*See* § 250.198.)

Federal regulations, at 1 CFR part 51, govern how BSEE and other Federal agencies incorporate documents by reference. Agencies may incorporate a document by reference by publishing in the Federal Register the document title, edition, date, author, publisher, identification number, and other specified information. The preamble of the final rule must also discuss the ways that the incorporated materials are reasonably available to interested parties and how those materials can be obtained by interested parties. The Director of the Federal Register will approve each incorporation of a publication by reference in a final rule that meets the criteria of 1 CFR part 51.

When a copyrighted publication is incorporated by reference into BSEE regulations, BSEE is obligated to observe and protect that copyright. BSEE provides members of the public with Web site addresses where these standards may be accessed for viewing—sometimes for free and sometimes for a fee. Standards development organizations decide whether to charge a fee. One such organization, the American Petroleum Institute (API), provides free online public access to review its key industry standards, including a broad range of technical standards. All API standards that are safety-related and all API standards that are incorporated into Federal regulations are available to the public for free viewing online in the Incorporation by Reference Reading Room on API's Web site. Several of those standards are incorporated by reference in this final rule (as described in parts II.C and IV of this document). In addition to the free online availability of these standards for viewing on API's Web site, hardcopies and printable versions are available for purchase from API. The API Web site address is: *http://www.api.org/publications-standards-and-statistics/publications/government-cited-safety-documents*.[1]

For the convenience of members of the viewing public who may not wish to purchase or view these incorporated documents online, they may be inspected at BSEE's office, 45600 Woodland Road, Sterling, Virginia 20166, or by sending a request by email to *regs@bsee.gov*.

C. Production Safety Systems

BSEE's regulations require operators to design, install, use, maintain, and test production safety equipment to ensure safety and the protection of the human, marine, and coastal environments.[2] Operators may not commence production until BSEE approves their production safety system application and BSEE conducts a preproduction inspection. These inspections are necessary to determine whether the operator's proposed production activities meet the OCSLA requirements and BSEE's regulations governing offshore production. The regulatory requirements include, but are not limited to, ensuring that the proposed production operations:

- Conform to OCSLA, as amended, its applicable implementing regulations, lease provisions and stipulations, and other applicable laws;
- Are safe;
- Conform to sound conservation practices and protect the rights of the U.S. in the mineral resources of the OCS;
- Do not unreasonably interfere with other uses of the OCS; and
- Do not cause undue or serious harm or damage to the human, marine, or coastal environments. (*See* §§ 250.101 and 250.106.)

BSEE will approve the operator's production safety system if it meets these criteria.

Typically, well completions associated with offshore production platforms are characterized as either dry tree (surface) or subsea tree completions. The "tree" is the assembly of valves, gauges, and chokes mounted on a well casing head and used to control the production and flow of oil or gas. Dry tree completions are typical for OCS shallow water production platforms, with the tree in a "dry" state located on the deck of the production platform. The dry tree arrangement allows direct access to valves and gauges to monitor well conditions, such as pressure, temperature, and flow rate, as well as direct vertical well access. Dry tree completions are easily accessible. Because of their easy accessibility, even as oil and gas production moved into deeper water, dry trees were still used on new types of production platforms more suitable for deeper water, such as compliant towers, tension-leg platforms (TLPs), and spars. These platform types gradually extended the depth of usage for dry tree completions to over 4,600 feet of water depth.

Production in the Gulf of Mexico (GOM) now occurs in depths of 9,000 feet of water, however, with many of the wells producing from water depths greater than 4,000 feet utilizing "wet" or subsea trees. Subsea tree completions are done with the tree located on the seafloor. These subsea completions are generally tied back to floating production platforms, and from there the production moves to shore through pipelines. Due to the location on the seafloor, subsea trees or subsea completions do not allow for direct access to valves and gauges, but the pressure, temperature, and flow rate from the subsea location is monitored from the production platform and, in some cases, from onshore data centers.

In conjunction with all production operations and completions, including both wet and dry trees, there are associated subsurface safety devices designed to prevent uncontrolled releases of reservoir fluid or gas.

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[1] To review these standards online, go to the API publications Web site at: *http://publications.api.org*. You must then log-in or create a new account, accept API's "Terms and Conditions," click on the "Browse Documents" button, and then select the applicable category (*e.g.*, "Exploration and Production") for the standard(s) you wish to review.

[2] The relevant provisions of the existing regulations, and the provisions of this final rule, typically apply to "you," defined by existing § 250.105 as "a lessee, the owner or holder of operating rights, a designated operator or agent of the lessees(s), a pipeline right-of-way holder, or a State lessee granted a right-of-use and easement." For convenience, however, throughout this document we refer to the parties required to comply with the provisions of the existing regulations and this final rule as the "operator" or "operators," unless explicitly stated otherwise.

Most of the current regulatory requirements for production safety systems are contained in subpart H of part 250 of BSEE's existing regulations (existing §§ 250.800 through 250.808). Revision of those requirements is the primary focus of this rulemaking.

II. Basis and Purpose of This Rule

A. Developments in Offshore Production

The existing regulations on production safety systems that this final rule is amending were first published on April 1, 1988. (*See* 53 FR 10690). Since that time, various sections have been updated, and BSEE has issued several Notices to Lessees and Operators (NTLs) to clarify the regulations and to provide guidance to lessees and operators.[3]

As discussed in part I.C of this document, subsea trees and other technologies have evolved, and their use has become more prevalent offshore, over the last 28 years, especially as more and more production has shifted from shallow waters to deepwater environments. This includes significant developments in production-related areas as diverse as foam firefighting systems; electronic-based emergency shutdown (ESD) systems; subsea pumping, waterflooding, and gas lift; and new alloys and equipment for high temperature and high pressure wells. The subpart H regulations, however, have not kept pace with those developments.

B. Proposed Revisions to Subpart H

On August 22, 2013, BSEE published a Notice of Proposed Rulemaking (the proposed rule) in the **Federal Register** entitled "Oil and Gas and Sulphur Operations on the Outer Continental Shelf—Oil and Gas Production Safety Systems." (*See* 78 FR 52240.) The purpose of that proposed rule was to improve worker safety and protection of the marine and coastal environment by helping reduce the number of production-related incidents resulting in oil spills, injuries and fatalities. The proposed rule was intended to keep pace with the changing technologies that enable the industry to develop resources in deeper waters (which often involves placing safety equipment on the seabed rather than on a surface platform) by addressing issues such as production safety systems, subsurface safety devices, safety device testing, and production processing systems and areas, and by incorporating best practices currently being deployed by industry leaders.

The comment period for the proposed rule was originally set to close on October 21, 2013. However, in response to several requests, BSEE published a notice on September 27, 2013 (78 FR 59632), extending the comment period until December 5, 2013.

As discussed in part IV.C of this document, BSEE received 57 separate written comments on the proposed rule from a variety of interested stakeholders (*e.g.,* industry, environmental groups, and other non-governmental organizations).

After the close of the comment period, BSEE subject matter experts and decision-makers carefully considered all of the relevant comments in developing this final rule. In part IV of this document, BSEE responds to those comments and discusses how several provisions of the proposed rule were revised in this final rule to address concerns or information raised by commenters.

As a result of BSEE's consideration of all the relevant comments and other relevant information, BSEE has developed this final rule, which is intended to improve worker safety and protection of marine and coastal ecosystems by helping to reduce the number of production-related incidents resulting in oil spills, injuries, and fatalities.

Among other significant changes to the existing regulations, this final rule establishes new requirements for the design, testing, maintenance, and repair of SPPE, using a lifecycle approach. The lifecycle approach involves careful consideration and vigilance throughout SPPE design, manufacture, operational use, maintenance, and decommissioning of the equipment. It is a tool for continual improvement throughout the life of the equipment. The lifecycle approach for SPPE is not a new concept, and its elements are discussed in several industry documents already incorporated by reference in the existing regulations (*see* § 250.198), such as API Spec. 6A, API Spec. 14A, and API RP 14B. This final rule codifies aspects of the lifecycle approach into the regulations and brings more attention to its importance.

BSEE's focus in the development of this rule has been, and will continue to be, improving worker safety and protection of the environment by helping to reduce the number of production-related incidents resulting in oil spills, injuries and fatalities. For example, there have been multiple incidents, including fatalities, injuries, and facility damage related to the mechanical integrity of the fire tube for tube-type heaters. BSEE is aware that this type of equipment has not been regularly maintained by industry. In the final rule, BSEE is requiring that this type of equipment be removed and inspected, and then repaired or replaced as needed, every 5 years. This requirement will improve equipment reliability to help limit incidents associated with the mechanical integrity of the fire tubes.

Three existing NTLs are directly related to issues addressed in this rulemaking:

- NTL No. 2011–N11, *Subsea Pumping for Production Operations;*
- NTL No. 2009–G36, *Using Alternate Compliance in Safety Systems for Subsea Production Operations;* and
- NTL No. 2006–G04, *Fire Prevention and Control Systems.*

Most of the elements from these NTLs are codified in this final rule. After the final rule is effective, BSEE intends to rescind these NTLs and remove them from the *BSEE.gov* Web site. BSEE may issue new NTLs to address any elements of those NTLs that are consistent with but not expressly incorporated in the final rule.

C. Summary of Documents Incorporated by Reference

BSEE is incorporating by reference one new standard in the final rule, API 570, Piping Inspection Code: In-service Inspection, Rating, Repair, and Alteration of Piping Systems, Third Edition, November 2009. As discussed in the standard, API 570 covers inspection, rating, repair, and alteration procedures for metallic and fiberglass-reinforced plastic piping systems and their associated pressure relieving devices that have been placed in service. The intent of this code is to specify the in-service inspection and condition-monitoring program that is needed to determine the integrity of piping systems. That program should provide reasonably accurate and timely assessments to determine if any changes in the condition of piping could compromise continued safe operation. It is also the intent of this code that owners/users respond to any inspection results that require corrective actions to assure the continued integrity of piping consistent with appropriate risk analysis. Items discussed in this standard include inspection plans, condition monitoring methods, pressure testing of piping systems, and inspection recommendations for repair or replacement.

The other standards referred to in this final rule are already incorporated by reference in other sections of BSEE's existing regulations. BSEE is incorporating more recently reaffirmed versions of those standards in this rule, as follows:

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[3] This includes NTL–2006–G04, *Fire Prevention and Control Systems* (2006), and NTL–2009–G38, *Using Alternate Compliance in Safety Systems for Subsea Production Operations* (2009). All NTLs can be viewed at: *http://www.bsee.gov/Regulations-and-Guidance/Notices-to-Lessees/index/.*

- BSEE is incorporating a more recently reaffirmed version of American National Standards Institute (ANSI)/API Spec. 6AV1, Specification for Verification Test of Wellhead Surface Safety Valves and Underwater Safety Valves for Offshore Service, First Edition, February 1996; Reaffirmed April 2008. This standard includes the minimum acceptable standards for verification testing of surface safety valves (SSVs)/underwater safety valves (USVs) for two performance requirement levels.
- BSEE is also incorporating a more recently reaffirmed version of ANSI/API Spec. 14A, Specification for Subsurface Safety Valve Equipment, Eleventh Edition, October 2005, Reaffirmed June 2012. This standard provides the minimum acceptable requirements for subsurface safety valves (SSSVs), including all components that establish tolerances and/or clearances that may affect performance or interchangeability of the SSSVs. It includes repair operations and the interface connections to the flow control or other equipment, but does not cover the connections to the well conduit.
- BSEE is incorporating a recently reaffirmed version of API RP 14E, Recommended Practice for Design and Installation of Offshore Production Platform Piping Systems, Fifth Edition, October 1991; Reaffirmed January 2013. This standard provides minimum requirements and guidelines for the design and installation of new piping systems on production platforms located offshore. This document covers piping systems with a maximum design pressure of 10,000 pounds per square inch gauge (psig) and a temperature range of − 20 degrees to 650 degrees Fahrenheit.
- BSEE is incorporating a more recently reaffirmed version of API RP 14F, Recommended Practice for Design, Installation, and Maintenance of Electrical Systems for Fixed and Floating Offshore Petroleum Facilities for Unclassified and Class 1, Division 1 and Division 2 Locations, Fifth Edition, July 2008, Reaffirmed April 2013. This RP sets minimum requirements for the design, installation, and maintenance of electrical systems on fixed and floating petroleum facilities located offshore. This RP is not applicable to mobile offshore drilling units (MODUs) without production facilities. This document is intended to bring together in one place a brief description of basic desirable electrical practices for offshore electrical systems. The RP recognizes that special electrical considerations exist for offshore petroleum facilities, including inherent electrical shock, space limitations, corrosive marine environment, and motion and buoyancy concerns.
- BSEE is incorporating a recently reaffirmed version of API RP 14J, Recommended Practice for Design and Hazards Analysis for Offshore Production Facilities, Second Edition, May 2001; Reaffirmed January 2013. This standard assembles into one document useful procedures for planning, designing, and arranging offshore production facilities, and performing a hazards analysis on open-type offshore production facilities.
- BSEE is incorporating a more recently reaffirmed version of ANSI/API Spec. Q1, Specification for Quality Programs for the Petroleum, Petrochemical and Natural Gas Industry, Eighth Edition, December 2007, Addendum 1, June 2010. This standard states that the adoption of a quality management system should be a strategic decision of any organization. The design and implementation of an organization's quality management system is influenced by its organizational environment, its varying needs, its particular objectives, the product it provides, and its size and organizational structure.

In addition, this rule incorporates API RP 500, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities Classified as Class I, Division 1 and Division 2, Second Edition, November 1997, Reaffirmed November 2002. The purpose of this RP is to provide guidelines for classifying locations at petroleum facilities as Class I, Division 1 and Class I, Division 2 for the selection and installation of electrical equipment.

D. Summary of Significant Differences Between the Proposed and Final Rules

After consideration of all relevant comments, BSEE made a number of revisions to the proposed rule language in the final rule. We are highlighting several of these changes here because they are significant, and because multiple comments addressed these topics. A discussion of the relevant comments, including BSEE's specific responses, is found in part IV of this document. All of the revisions to the proposed rule language made after consideration of relevant comments are explained in more detail in that part. The significant revisions made in response to comments include:

1. Best Available and Safest Technology (BAST)—§ 250.107(c)

BSEE proposed to revise the BAST provisions in existing § 250.107 in order to align the regulatory language more closely with the statutory BAST language in OCSLA, to clarify BSEE's expectations, and to make it easier for operators to understand when they must use BAST. BSEE proposed to delete existing paragraph (d) (regarding authority of the Director to impose additional BAST measures) and to revise paragraph (c) to include more of the statutory language and to provide an exception from use of BAST when an operator demonstrates that the incremental benefits of using BAST are insufficient to justify its incremental costs.

BSEE received numerous comments on this proposed change. Among other issues, some commenters stated that the proposed language failed to confirm BSEE's prior position regarding compliance with BSEE's regulations being considered the use of BAST. As explained in more detail in part IV.C of this document, after consideration of the comments and further deliberation, BSEE has revised and reorganized final § 250.107(c) to address many of these issues. The revised language clarifies BSEE's position that compliance with existing regulations is presumed to be use of BAST until (and unless) the Director makes a specific BAST determination that other technology is required. The final rule also provides that the Director may waive the requirement to use BAST on a category of existing operations if the Director determines that use of BAST by that category of existing operations would not be practicable. In addition, the revised language provides a clear path for an operator of an existing facility to request a waiver from use of BAST if the operator demonstrates, and the Director determines, that use of BAST would not be practicable. These revisions are consistent with the statutory language and intent of OCSLA, and will further clarify for operators when use of BAST is or is not required and when that requirement may be waived.

2. Firefighting Systems—§ 250.859

BSEE proposed to revise the firewater systems requirements for both open and totally enclosed platforms. Among other things, BSEE proposed requiring that the firefighting systems conform to API RP 14G, Recommended Practice for Fire Prevention and Control on Fixed Open-type Offshore Production Platforms. This proposed requirement was in addition to existing § 250.803(b)(8), which only requires firefighting systems to conform to section 5.2 in API RP 14G. Many commenters expressed concerns that incorporating the entire RP would create conflicts with the regulations and subsequent inspection policies because API RP 14G does not include a step-by-step method of designing and installing a complete firefighting system. Furthermore, the commenters noted that API RP 14G discusses multiple types of firefighting systems (*e.g.,* fire water, foam, dry chemical, and gaseous extinguishing agent). The commenters suggested various alternatives for compliance with API RP 14G, including requiring compliance only with applicable firewater system sections of API RP 14G.

BSEE understands that there are many different types of firefighting systems discussed in API RP 14G. Accordingly, in this final rule, BSEE has revised proposed § 250.859(a) to require compliance with the firewater system sections of API RP 14G. This change will clarify BSEE's expectations for compliance with this industry standard. This change will also enhance the overall firewater system operability by requiring compliance with provisions in API RP 14G (*e.g.,* inspection, testing, and maintenance) in addition to section 5.2, as required by the former regulations.

BSEE also made other changes to the proposed § 250.859. Specifically, as suggested by several commenters, we clarified the firefighting requirements to minimize confusion regarding U.S. Coast Guard (USCG) jurisdiction and to separate the firewater requirements for fixed facilities and floating facilities. In particular, we revised § 250.859(a) in the final rule to include requirements for firefighting systems on "fixed facilities," and added final paragraph (b) to clarify the requirements for firefighting systems on floating facilities. Final § 250.859(b) also clarifies that the firewater system must protect all areas where production-handling equipment is located, that a fixed water spray system must be installed in enclosed well-bay areas where hydrocarbon vapors may accumulate, and that the firewater system must conform to the USCG requirements for firefighting systems on floating facilities.

3. Operating Pressure Ranges—§§ 250.851, 250.852, 250.858, and 250.865

BSEE received a number of comments on proposed §§ 250.851(b), 250.852(a), 250.858(b), and 250.865(b), regarding the operating pressure ranges for certain types of equipment, including the pressure safety high and low set points. As discussed in the proposed rule, pressure recording devices must be used to establish the new operating pressure ranges for specific equipment (*i.e.,* pressure vessels, flowlines, gas compressor discharge sensors, and surface pump discharge sensors) at any time when the normalized system pressure changes by a certain pressure or percentage. An operating range is used to establish the safety device set points that would trigger a component shut-in. Multiple commenters expressed concerns about the proposed change in operating pressures that would trigger a production safety system shut-in. Commenters also discussed the need to help prevent nuisance shut-ins (*i.e.,* shut-ins that occur under normal operating conditions when a safety device's operating pressures are set too narrowly).

BSEE is requiring the operating pressure ranges because we are aware that not all operators monitor how the pressure regimes are changing. Nonetheless, to help prevent nuisance shut-ins, the final rule allows operators to use a more conservative approach by resetting the operating pressure at an operating range that is lower than the specified change in pressure. To clarify how a new operating pressure range can be established, BSEE added language to the appropriate locations in final §§ 250.851, 250.852, 250.858, and 250.865 stating that once system pressure has stabilized, pressure recording devices must be used to establish new operating pressure ranges. The revised language also clarifies that the pressure recording devices must document the pressure range over time intervals that are no less than 4 hours and no more than 30 days long. Establishing new operating ranges based on these parameters will help prevent nuisance shut-ins, by basing the shut-in set points on an identified, stabilized baseline. BSEE also added a minimum time provision to each of these final provisions to ensure that the system pressure is stable before setting the operating ranges. The time interval limits were set, in part, because pressure spikes and/or surges may not be discernable in a range chart if the run time is too long.

4. Emergency Shutdown System—§ 250.855

In proposed § 250.855, BSEE retained the ESD requirements from § 250.803(b)(4) in the existing regulations, and clarified that the breakable loop in the ESD system is not required to be physically located on the facility's boat landing; however, in all instances, the breakable loop must be accessible from a vessel adjacent to or attached to the facility. A commenter expressed concern that the proposed rule referenced only pneumatic-type valves, while current technology incorporates electronic switching devices.

After considering the issues raised in the comment and reviewing current technology, BSEE has revised proposed § 250.855(a) in the final rule to provide that electric ESD stations should be wired as "de-energize to trip" or as supervised circuits. Since BSEE is now allowing electric ESD switches, BSEE wants to ensure that ESD equipment is fully functional, because the key role of the ESD system is to shut-in the facility in an emergency. Therefore, BSEE also added new language clarifying that all ESD components should be of high quality and corrosion resistant, and that ESD stations should be uniquely identified. These revisions are necessary to help ensure that these newer types of ESD stations function properly and to assist personnel in recognizing the ESD location for activation in an emergency.

In addition to the differences between the proposed and final rules discussed here and in part IV, BSEE also made minor changes to the proposed rule language in response to comments suggesting that BSEE eliminate redundancy, clarify potentially confusing language, streamline the regulatory text, or align the language in the rule more closely with accepted industry terminology. BSEE also made other revisions to this final rule to correct grammatical or clerical errors, eliminate ambiguity, and further clarify the intent of the proposed language.

E. Deferred Compliance Dates

The final rule is effective on November 7, 2016. However, BSEE has deferred the compliance dates for certain provisions of the final rule until the times specified in those provisions and as discussed in more detail in part IV of this document.

Compliance with § 250.801(a)(2) for requirements related to boarding shutdown valves (BSDVs) and their actuators as SPPE is deferred until September 7, 2017.

Compliance with § 250.851(a)(2), regarding District Manager approval of existing uncoded pressure and fired vessels that are not code stamped according to ANSI/American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, is deferred until March 1, 2018.

Compliance with the elements of § 250.859(a)(2) requiring all new firewater pump drivers to be equipped with automatic starting capabilities upon activation of the ESD, fusible loop, or other fire detection system is deferred until September 7, 2017.

III. Final Rule Derivation Table

The final rule restructures the provisions of existing subpart H. The new regulations are divided into shorter, easier-to-read sections. These sections are more logically organized, as each section focuses on a single topic instead of multiple topics, as found in each section of the existing regulations. To assist in understanding the revised subpart H regulations, the following table shows how sections of the final rule correspond to the provisions in former subpart H:

Current regulation	Final Rule
§ 250.800 General requirements.	§ 250.800 General.
§ 250.801 Subsurface safety devices.	§ 250.810 Dry tree subsurface safety devices - general.
	§ 250.811 Specifications for SSSVs – dry trees.
	§ 250.812 Surface-controlled SSSVs – dry trees.
	§ 250.813 Subsurface-controlled SSSVs.
	§ 250.814 Design, installation, and operation of SSSVs – dry trees.
	§ 250.815 Subsurface safety devices in shut-in wells – dry trees.
	§ 250.816 Subsurface safety devices in injection wells – dry trees.
	§ 250.817 Temporary removal of subsurface safety devices for routine operations.
	§ 250.818 Additional safety equipment – dry trees.
	§ 250.821 Emergency action and safety system shutdown – dry trees.
	§ 250.825 Subsea tree subsurface safety devices - general.
	§ 250.826 Specifications for SSSVs – subsea trees.
	§ 250.827 Surface-controlled SSSVs – subsea trees.
	§ 250.828 Design, installation, and operation of SSSVs – subsea trees.
	§ 250.829 Subsurface safety devices in shut-in wells – subsea trees.
	§ 250.830 Subsurface safety devices in injection wells – subsea trees.
	§ 250.832 Additional safety equipment – subsea trees.
	§ 250.837 Emergency action and safety system shutdown – subsea trees.
§ 250.802 Design, installation, and operation of surface production-safety systems.	§ 250.819 Specification for surface safety valves (SSVs).
	§ 250.820 Use of SSVs.
	§ 250.833 Specification for underwater safety valves (USVs).
	§ 250.834 Use of USVs.
	§ 250.840 Design, installation, and maintenance - general.
	§ 250.841 Platforms.
	§ 250.842 Approval of safety systems design and installation features.
§ 250.803 Additional production system requirements.	§ 250.850 Production system requirements - general.
	§ 250.851 Pressure vessels (including heat exchangers) and fired vessels.
	§ 250.852 Flowlines/Headers.

Current regulation	Final Rule
	§ 250.853 Safety sensors.
	§ 250.855 Emergency shutdown (ESD) system.
	§ 250.856 Engines.
	§ 250.857 Glycol dehydration units.
	§ 250.858 Gas compressors.
	§ 250.859 Firefighting systems.
	§ 250.862 Fire and gas-detection systems.
	§ 250.863 Electrical equipment.
	§ 250.864 Erosion.
	§ 250.869 General platform operations.
	§ 250.871 Welding and burning practices and procedures.
§ 250.804 Production safety-system testing and records.	§ 250.880 Production safety system testing.
	§ 250.890 Records.
§ 250.805 Safety device training.	§ 250.891 Safety device training.
§ 250.806 Safety and pollution prevention equipment quality assurance requirements.	§ 250.801 Safety and pollution prevention equipment (SPPE) certification.
	§ 250.802 Requirements for SPPE.
§ 250.807 Additional requirements for subsurface safety valves and related equipment installed in high pressure high temperature (HPHT) environments.	§ 250.804 Additional requirements for subsurface safety valves (SSSVs) and related equipment installed in high pressure high temperature (HPHT) environments.
§ 250.808 Hydrogen sulfide.	§ 250.805 Hydrogen sulfide.
NEW SECTIONS	
§ 250.803 What SPPE failure reporting procedures must I follow?	
§ 250.831 Alteration or disconnection of subsea pipeline or umbilical.	
§ 250.835 Specification for all boarding shutdown valves (BSDV) associated with subsea systems.	
§ 250.836 Use of BSDVs	
§ 250.838 What are the maximum allowable valve closure times and hydraulic bleeding requirements for an electro-hydraulic control system?	
§ 250.839 What are the maximum allowable valve closure times and hydraulic bleeding requirements for a direct-hydraulic control system?	
§ 250.854 Floating production units equipped with turrets and turret-mounted systems.	
§ 250.860 Chemical firefighting system.	
§ 250.861 Foam firefighting systems.	
§ 250.865 Surface pumps.	
§ 250.866 Personnel safety equipment.	
§ 250.867 Temporary quarters and temporary equipment.	
§ 250.868 Non-metallic piping.	
§ 250.870 Time delays on pressure safety low (PSL) sensors.	
§ 250.872 Atmospheric vessels.	
§ 250.873 Subsea gas lift requirements.	
§ 250.874 Subsea water injection systems.	
§ 250.875 Subsea pump systems.	
§ 250.876 Fired and exhaust heated components.	

IV. Comments on the Proposed Rule and BSEE's Responses

A. Overview

In response to the proposed rule, BSEE received 57 separate sets of comments from individual entities (companies, industry organizations, or private citizens). (One comment included 1,527 individual letters, as an attachment, although the content of all of these letters was substantially the same.) Some entities submitted comments multiple times. All comments are posted at the *Federal eRulemaking Portal: http://www.regulations.gov.* To access the comments, enter "BSEE–2012–0005" in the search box. BSEE reviewed all comments submitted. For the complete list of public comments with summaries of Responses, refer to the comment-response file located in the rulemaking docket.

In addition to the comments on all provisions of the proposed rule, BSEE solicited comments on certain issues related to those proposed provisions, including:

- Organization of the rule based on use of subsea trees and dry trees;
- Lifecycle approach to other types of critical equipment, such as blowout preventers (BOPs);
- Failure Reporting and Information Dissemination; and
- Third-party Certification Organizations.

BSEE also solicited comments and requested information on other topics that were indirectly related to, but outside the specific scope of, this rulemaking. These topics included:

- Opportunities to limit emissions of natural gas from OCS production equipment; and
- Opportunities to limit flaring of natural gas.

BSEE requested comments on natural gas emissions and flaring to inform future policies and potential rulemakings. Since the information provided in response to these topics is not directly related to, and was not considered in developing, this final rule, we have not discussed those comments or information in this document.

B. Summary of General Comment Topics

In addition to comments on specific provisions of the proposed rule, various commenters raised more general issues, including:

- Extension of the public comment period;
- BSEE and USCG jurisdiction; and
- Arctic production safety systems.

The following is a summary of, and BSEE's responses to, comments on these topics. BSEE's responses to more specific comments on proposed provisions are addressed in the "Section-by-Section" discussion in part IV.C of this document.

1. Requests for an Extension of the Public Comment Period

BSEE received a number of comments requesting an extension of the public comment period. In response to these requests, BSEE extended the public comment period by 45 days. Some commenters also requested that BSEE hold a public workshop on the proposed rule.

BSEE determined that the extension of the public comment period was sufficient for the public to review, understand, and comment on the proposed rule and thus, that a workshop was not necessary. In addition, BSEE determined that a public workshop would result in significant delays in developing and publishing a final rule, which would also delay the improvements in safety and environmental protection intended by the final rule with no commensurate benefits to justify that delay.

2. BSEE and USCG Jurisdiction

BSEE received comments on a number of provisions in the proposed rule expressing concerns that BSEE was reaching beyond its authority and trying to regulate activities that are under USCG jurisdiction. Both BSEE and the USCG have jurisdiction over different aspects and components of oil and gas production safety systems. These regulations apply only to operations that are under BSEE authority. OCSLA directs that the Secretary prescribe regulations necessary to provide that OCS operations are "conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages,. . . or other occurrences which may cause damage to the environment or to property, or endanger life or health." (43 U.S.C. 1332(6).) Those regulations apply to all operations conducted under an OCS lease. (43 U.S.C. 1334(a).)

To promote interagency consistency in the regulation of OCS activities, and to describe the agencies' respective and cooperative roles, BSEE and USCG have signed formal memoranda of understanding (MOUs) and memoranda of agreement (MOAs). Those memoranda recognize that, in many respects, BSEE and USCG share responsibility and authority over various aspects of safety and environmental protection related to oil and gas operations on the OCS. The memoranda reflect that BSEE has, and exercises, authority to regulate safety and environmental functions related to OCS facilities, including: developing regulations governing OCS operations, permitting, conducting inspections and investigations, enforcing regulatory requirements, and overseeing oil spill response planning and preparedness. Similarly, the memoranda reflect USCG's authority to regulate the safety of life, property, and navigation and protection of the environment on OCS units and vessels engaged in OCS activities, as well as its authority to regulate workplace safety and health, workplace activities, conditions and equipment on the OCS, and oil spill preparedness and response.

The various memoranda are intended to minimize duplication of effort and promote consistency of regulations and policies where shared responsibilities exist (including, for example, issues related to both fixed and floating facilities) but do not limit either agency's statutory authorities and responsibilities. The USCG–BSEE memoranda are available on BSEE's Web site at: *https://www.bsee.gov/newsroom/partnerships/interagency*.

Numerous comments were submitted regarding BSEE and USCG jurisdiction in connection with multiple sections within the rule. Some comments cited jurisdictional concerns as a general reason why a section should not have been included in the proposed rule. Other commenters expressly noted concern that BSEE's crossing of jurisdictional lines with the USCG could lead to confusion or result in regulatory burdens on the operators. These commenters noted that the USCG has its own rules that govern all or portions of pressurized vessels and fixed and floating facilities. All of the comments that discussed USCG's rules asserted that BSEE lacked some degree of authority concerning the regulation of production safety systems under OCSLA.

Commenters also raised issues concerning BSEE's authority with regard to distinctions between floating and fixed platforms. Commenters described BSEE's authority as limited to fixed platforms and, due to that limitation, they asserted that BSEE does not have the authority to regulate issues regarding floating facilities. These issues were often raised with regard to specific provisions, such as §§ 250.861, Foam firefighting systems, and 250.862, Fire and gas-detection systems.

Some comments raised jurisdictional issues regarding sections of the proposed rule dealing with certain technical or safety matters that the commenters asserted are within USCG's area of expertise (*e.g.,* fire and smoke protection, detection and extinguishing systems, pressure vessels, and electrical systems).

BSEE does not agree with the comments suggesting that the provisions in the proposed rule are outside of BSEE's jurisdiction. This rulemaking applies to production operations that BSEE has historically regulated under longstanding regulations consistent with the authority granted by OCSLA to the Secretary and subsequently delegated to BSEE. This final rule is consistent with the USCG–BSEE MOAs and MOUs. Nothing in the USCG–BSEE MOAs or

MOUs limits BSEE's statutory authority as consistently exercised through BSEE's regulations at part 250.

3. Arctic Production Safety Systems.

A number of comments requested that BSEE add specific production safety requirements for the Arctic OCS environment to the final rule.

BSEE does not agree that new Arctic-specific provisions, which were not included in the proposed rule, should be added to this final rule. Prior to approval by BSEE, all proposed oil and gas production operations on the OCS, including in the Arctic, are required to have production safety equipment that is designed, installed, operated, and tested specifically for the surrounding location and environmental conditions of operation. In particular, the existing BSEE regulations (retained in relevant part by this final rule) require that production safety system equipment and procedures for operations conducted in subfreezing climates take into account floating ice, icing, and other extreme environmental conditions that may occur in the area. (*See* § 250.800.) In addition, all production system descriptions included in Development and Production Plans (DPPs), submitted for development and production activities on a lease or unit in any OCS area other than the Western GOM, go through a formal review and comment period by the public, which provides an opportunity for any interested stakeholder to suggest additional safety measures for production facilities in the Arctic.[4] Moreover, because of the unique Arctic environment, BSEE conducts extensive research on enhanced technologies for oil and gas development on the Arctic OCS (*see www.bsee.gov/Technology-and-Research/Technology-Assessment-Programs/Categories/Arctic-Research*). These research projects and the knowledge gained from them will inform future decisions, rulemaking, and guidance for Arctic OCS operations.

C. Response to Comments and Section-by-Section Summary

This discussion summarizes: all of the regulatory sections in the final rule; specific comments submitted, if any, on each section in the proposed rule; and BSEE's responses to those comments, including whether BSEE made any revisions to the proposed regulatory text in this final rule in response to the comments. The comments and BSEE's responses are organized as follows: General Comments; Economic Analysis Comments; and Section-by-Section Summary and Responses to Comments.

1. General Comments

BSEE received public comments on the following general issues related to the proposed rule that were not specific to any proposed requirement.

Third-Party Certifications

Comment—Commenters asserted that, by including so many third-party certifications of equipment and processes in the proposed rule, BSEE is implying that other proposed requirements that do not call for certifications are somehow less important.

Response—All of the provisions in this final rule are important. The certifications required by this rule are just one tool that BSEE uses to help ensure that operators meet the level of safety and environmental protection mandated under OCSLA. Other provisions of this rule also help meet that mandate through requirements placed directly on the operators.

Employee Qualifications

Comment—Commenters asserted that the rule does not ensure operator qualification requirements for staff responsible for operating the offshore production facility. They suggested that each company permitted to conduct offshore production facility operations should have a written operator qualification program. They recommended that programs should include, at a minimum, an evaluative procedure (including reevaluation as appropriate), explicit reasons why individuals no longer would be qualified, and record-keeping requirements.

Response—BSEE does not agree that any such requirements should be added to this final rule. Operator personnel qualifications are already addressed in the Safety and Environmental Management System (SEMS) regulations in part 250, subpart S, specifically § 250.1915, What training criteria must be in my SEMS program?

Conflicts With Other Regulations

Comment—A commenter asserted that BSEE needs to ensure that the proposed subpart H changes align with the requirements of existing regulations in subparts J, S, I, and O, as well as with the regulatory requirements of other agencies (*i.e.,* USCG). The commenter suggested that many of the conflicts with other subparts in proposed subpart H could be resolved through regulatory changes in the other subparts. The commenter provided several examples to illustrate the concern—*e.g.,* that the subpart J regulations include the BSDV, although there are requirements for BSDVs in proposed subpart H that either supplement or conflict with the existing requirements in subpart J. The commenter also stated that other parts of the proposed rule referred to issues that operators would expect to be addressed under a different subpart (*e.g.,* proposed § 250.800(c)(3) requirements for stationkeeping would be more appropriate in subpart I).

Response—BSEE does not agree with the suggestion that this final rule conflicts with or contradicts any other provision in BSEE's regulations. There may be overlapping requirements in the various subparts, however, BSEE does not agree that there are conflicts. If there is a need for additional clarity, BSEE will issue guidance in the future. For example, the suggestion that the BSDV requirements in proposed subpart H conflict with BSDV requirements in existing subpart J is incorrect. Subpart H applies to any piping downstream of the BSDV, while subpart J's requirements apply to piping upstream of the BSDV. Similarly, the stationkeeping design requirements for floating production facilities in final § 250.800(c)(3) refer to API RP 2SK and API RP 2SM, which are also incorporated by reference in the design requirements for platforms under § 250.901 of subpart I. While the commenter may consider this duplicative, including the same requirements in subpart H and subpart I ensures that the facilities are designed with the production systems in mind and helps prevent conflicts. While BSEE is not aware of any inconsistencies, BSEE will monitor implementation of this final rule to assess whether any confusion arises from any overlap between subpart H provisions and other BSEE regulations. BSEE will consider whether to address any such issues, if they arise, in possible future rulemakings or guidance.

Finally, as previously discussed, this final rule is aligned with the responsibilities and regulations of the USCG.

Impacts on Existing Equipment

Comment—Commenters asserted that the proposed regulations were not clear with respect to the impact of the requirements on existing equipment (such as non-certified SPPE, BSDVs and single bore production risers) that is fit for purpose and performing satisfactorily within the established operating window and design conditions.

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[4] *See* 30 CFR 550.267(b). DPPs are reviewed and approved by BSEE's sister agency, BOEM, which also considers the public comments on submitted DPPs.

Response—BSEE does not agree that the proposed rule was unclear as to any potential impacts on existing equipment. BSEE considered the impact on existing equipment designs when specifying the effective dates for new provisions and determined whether and when it is appropriate for new requirements to apply to existing equipment. For example, most existing SPPE is already certified under the existing regulations; this final rule adds a requirement for certification of BSDVs and their actuators, beginning 1 year after publication of the final rule. Also, under the final rule, operators may continue to use existing SPPE, such as BSDVs. However, if a BSDV fails or does not meet the applicable requirements (*e.g.*, final §§ 250.836 and 250.880(c)(4)), then the operator must replace it with a BSDV that meets all of the requirements, including final §§ 250.801 and 250.802.

Similarly, under final § 250.800(c)(2), operators may continue to use single bore production risers that are already installed on floating production systems, although they cannot install new single bore production risers on floating productions systems after the effective date of this final rule (as explained further in part IV.C). However, for already-installed single bore production risers, additional precautions are necessary for wear protection, wear measurement, fatigue analysis, and pressure testing to perform any well operations with the tree removed. This is consistent with established BSEE policy and approvals for well operations using single bore production risers.

Pew Arctic Standards Report

Comment—A commenter asserted that the Pew Charitable Trusts' September 2013 Arctic Standards Report identified a number of improvements that could be made in BSEE's regulations. The commenter requested that BSEE review and incorporate specific sections of this report related to the subpart H rulemaking.[5]

Response—BSEE reviewed the information provided in the Pew Arctic report, which only addresses Arctic operations. This rulemaking, however, applies to production operations in all OCS regions; the requirements are not specific to one area of the OCS. As previously mentioned, the existing BSEE regulations already require that production safety system equipment and procedures for operations located in subfreezing climates take into account floating ice, icing, and other extreme environmental conditions that may occur in the area. This final rule does not change that requirement. The sections of the report the commenter cited are outside the scope of this rulemaking and address matters not proposed for public notice and comment through the proposed rule.

2. Economic Analysis Comments

BSEE received public comments on the following issues related to the initial economic analysis for the proposed rule and the economic analysis summary in the proposed rule.

Facility Modifications

Comment—A commenter asserted that the initial economic analysis did not reflect the extensive facility modifications that the proposed rule would trigger. The commenter asserted that the agency failed to consider the economic impact of codifying numerous NTLs and industry practices. One commenter specifically questioned the estimated impact on existing fire-fighting systems designed in accordance with the existing regulations and previously approved by BSEE.

Response—BSEE disagrees with the suggestion that we have underestimated the potential cost impacts of this rule. Many of the provisions in the proposed rule were based on existing policy and guidance contained in permit conditions and NTLs. NTLs provide guidance to operators on compliance with existing regulations. BSEE included any costs associated with existing regulatory policy and guidance and industry practices in the baseline of the economic analysis. As specified by Executive Order (E.O.) 12866 and Office of Management and Budget (OMB) Circular A–4, ''Regulatory Analysis'' (2003), which provides guidance to Federal agencies on the preparation of economic analyses, BSEE estimates the costs of a rule resulting from modifications or new provisions in the rule that cause changes from the baseline. Pursuant to OMB Circular A–4, the baseline represents the agency's best assessment of what the world would be like without the new rule. The baseline includes all practices that are already incorporated into industry or regulatory standards, and that would continue to exist even if the new rule were not adopted. For economic analysis purposes, we assume that operators are already following the published NTLs in order to comply with existing regulations; thus, there is no change in industry practices, and no additional costs, when such practices are codified in the regulations.

In particular, the requirements for the firefighting systems in the final rule are consistent with the requirements in the existing BSEE regulations. The costs for the chemical firefighting systems and the inspection and testing of foam in the foam firefighting systems are addressed in the final economic analysis for this rule.

Impacts on Small Businesses

Comment—A commenter asserted that the bureau failed to accurately determine the impacts on small businesses operating offshore and on those businesses supporting the offshore industry through services and equipment.

Response—In the Regulatory Flexibility Act (RFA) determination for this final rule (*see* part V of this document), BSEE estimated that there are 99 companies with active operations on the OCS and approximately 54 companies operating on the OCS that are considered small businesses. However, analyses conducted under the RFA are only required to consider the direct impacts of a new regulation. The indirect impacts of a regulation, or the effects of the regulation on industries that support the directly affected industry, are not considered in an RFA determination or analysis.

As explained in the RFA discussion in part V, BSEE estimated that the total annual cost of the rule per small entity would be about $18,000, which BSEE determined is not a significant economic impact. More details about these estimates are in the RFA discussion in part V of this document.

Impacts on Existing Operations

Comment—A commenter asserted that, while the proposed rule is intended primarily to codify standard industry practice and clarify existing regulations, BSEE had not acknowledged the impact of the proposed rule on existing operations and that the initial economic analysis grossly underestimated the actual cost.

Response—BSEE disagrees with those comments. The initial economic analysis adequately addressed the significant new costs that BSEE anticipated at the time of the proposed rule. However, as explained in more detail in part V of this document, the final economic analysis includes several adjustments to the estimated costs of the final rule, based on comments on the proposed rule and on changes to existing practices that BSEE now expects will occur as a result of the final rule. For example, the requirements for the firefighting systems in the final rule are consistent with the requirements in the existing BSEE regulations. The costs for the chemical firefighting systems and the inspection and testing of foam in the foam firefighting systems are addressed in the final economic analysis for this rule.

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[5] Examples of the specific topics in the Pew Arctic report referenced by the commenter included: Tank Performance Standards; Critical Operations Curtailment; and Equipment Design and Operating Performance Standards.

Uncertainty of Regulatory Benefits

Comment—A commenter asserted that the proposed rule did not discuss why the new requirements are necessary and asked what incidents may be avoided by the proposed requirements. The commenter noted that although the bureau did conduct a break-even analysis for the proposed rule, since the regulatory benefits are highly uncertain, neither the proposed rule notice nor the initial economic analysis discussed the regulatory benefits of the proposed rule.

Response—BSEE does not agree that the proposed rule did not explain why the proposed requirements were necessary. The preamble to the proposed rule adequately described the general and specific purposes of the proposal. (*See* 78 FR 52241) In addition, as discussed in part V of this document, BSEE follows E.O. 12866 and 13563 and OMB Circular A–4 in performing its economic analyses. The costs and benefits related to this final rule are presented in the final economic analysis, available in the public docket and summarized in part V. The final economic analysis includes a break-even analysis, describes the types of incidents that could be avoided, and estimates the cost savings that would result by implementing the final rule. The full economic analysis describes in detail BSEE's data, methodology, and results for the benefits analysis. The potential benefits resulting from the final rule include the potential reduction in oil spills and injuries to workers, which are difficult to quantify and are highly dependent on the actual reduction in the probabilities of the incidents occurring. Due to this uncertainty, BSEE conducted a break-even analysis consistent with the guidance provided in OMB Circular A–4.

Reports of Design Changes or Modifications

Comment—One commenter questioned the initial economic analysis conclusion that there would only be a limited number of reports of design changes or modifications. The estimated labor for BSEE to work with this information is $68. Given this effort by BSEE to analyze the information, the commenter questioned how this new requirement will be of any value to BSEE.

Response—In BSEE's experience, design changes do not happen frequently; therefore, we do not anticipate very many reports based on this requirement (*i.e.*, BSEE estimated 1 change per year). Since the reporting of design changes to BSEE is a new requirement, the number of design change reports is only an estimate; BSEE will adjust the frequency of design changes based on the actual number when we renew the relevant information collection in 3 years. The reporting of design changes due to the failure of critical safety equipment, as well as the reporting of such failures, is extremely important to the development of a knowledge-base that can be used to analyze past equipment failures and responses and help to prevent future failures that would jeopardize safety and environmental protection on the OCS.

Estimated Costs for Marine Construction

Comment—A commenter questioned the accuracy of the estimated costs for marine construction in the initial economic analysis because the estimates did not include any costs (or the time) for transportation on the OCS.

Response—Although the commenter did not explain what it meant by "marine construction," BSEE assumes it was referring to the cost of transportation on the OCS. BSEE does not agree that the total costs of transportation on the OCS should be included in the costs of the rule because operators can use regularly scheduled trips, coordinating with crew boats or helicopter trips, to achieve compliance with the final rule. There does not need to be a special, separate trip for this purpose. Moreover, trips to and from these facilities already occur frequently and are, therefore, part of the baseline. The costs for the petroleum technician, labor, shipping and materials are discussed in the final economic analysis.

Oil Spill Estimates

Comment—A commenter asserted that BSEE overestimated the amount of spilled oil in the initial economic analysis, and that the estimate of 57 leakage occurrences appears too high. The commenter requested that a list of the incidents considered by BSEE be included in the response to comments in the final rulemaking.

Response—It appears that the commenter assumed that the oil spill volumes estimated in the initial analysis were related to the leakage occurrences. However, the oil spill estimate is not related to leakage incidents or leakage rates. Oil spill volumes refer to oil released into the environment. By contrast, the leakage occurrences refer to leaking SSSVs, which are part of a closed safety system, designed to minimize oil spills by stopping the flow within the tubing if the riser is damaged; thus, that oil is not released into the environment. Based on BSEE data for June 2003 through May 2013, BSEE issued a total of 57 Incidents of Noncompliance (INCs) associated with leakage rates (P–280) under the category of "Subsurface Safety Device Testing."

Impacts of BAST

Comment—Several commenters questioned the economic feasibility and impact of using BAST. They also asserted that the initial economic analysis failed to include any costs associated with the proposed revisions to § 250.107(c) and that those potential costs should have been estimated and analyzed in the economic analysis.

Response—This rule does not identify any technology as BAST and merely clarifies the regulatory language to be more in alignment with the statutory language. BSEE disagrees with the suggestions that the revisions to § 250.107(c) constitute either a BAST program or a BAST determination, and that those revisions will impose new costs on operators. As explained in more detail later in this document, the revisions to § 250.107(c) are intended to align the language of that paragraph more closely with the statutory language and intent of the BAST provision in OCSLA (43 U.S.C. 1347(b)). In fact, final § 250.107(c)(1) uses essentially the same language as the statutory provision, although the language in the final regulation is arranged so as to be more clear and easier to follow. Similarly, final § 250.107(c)(2) clarifies and confirms the longstanding principle, stated in former § 250.107(c), that conformance with BSEE regulations qualifies as the use of BAST, unless or until the BSEE Director makes a specific BAST determination that other technologies are required. Thus, since final paragraph (c)(1) merely incorporates and clarifies the statutory language, and paragraph (c)(2) clarifies and reconfirms the existing regulatory language and policy, those provisions do not impose any new BAST requirements or create a new BAST program.[6] Moreover, even assuming that there were any costs associated with final § 250.107(c)(1) and (2), they would be considered part of the economic baseline, as they merely reflect existing law and practice.

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[6] In fact, several industry comments acknowledged that BSEE has been implementing a BAST program for some time, as discussed later in part IV.C with regard to comments on proposed § 250.107(c).

The only arguably significant addition to existing § 250.107(c) is final paragraph (c)(3), which states that the Director may waive the requirement to use BAST for a category of existing operations if the Director determines that use of BAST by that category of existing operations would not be practicable, and that the Director may waive the use of BAST at an existing operation if the operator demonstrates, and the Director determines, that the use of BAST would not be practicable for that operation. However, paragraph (c) in the existing regulation already effectively provided for such an exception from the required use of BAST,[7] although it did not provide any explicit direction as to how to invoke that exception. Final paragraph (c)(3) provides a well-defined path for operators to seek and be granted a waiver from BAST requirements. Moreover, both the exception language in former paragraph (c) and the waiver language in final paragraph (c)(3) are consistent with the statutory BAST language, which states that BAST must be used on existing operations ‘‘whenever practicable.’’ Final paragraph (c)(3) embodies the converse of that requirement, and clarifies that use of BAST will not be required on existing facilities when the operator demonstrates, and the Director determines, that it is not practicable. Thus, final paragraph (c)(3) does not impose any new requirements, and any potential costs associated with that provision are properly included in the economic baseline, because final paragraph (c)(3) is consistent with the exception in existing § 250.107(c) and with OCSLA. Nonetheless, BSEE has estimated the minimal potential costs associated with BAST waiver requests and included that estimate in the final economic analysis and the Paperwork Reduction Act burden estimate, as described in part V of this document.[8]

BAST Process

Comment—Another commenter asserted that there was no transparent process for identifying what technology qualifies as ‘‘BAST’’ and that, due to the lack of clarity and transparency on what would be required, the cost impact was grossly understated.

Response—BSEE disagrees with this comment. As stated in response to the prior comment, neither proposed nor final § 250.107(c) involves or affects BSEE's process for determining what specific technology is BAST. Revised § 250.107(c) only clarifies, on a non-technology-specific basis, when use of BAST is or is not required, and confirms that conformance with existing BSEE regulations is considered use of BAST unless and until the BSEE Director makes specific determinations that other technologies are BAST. Thus, as previously discussed, there are no costs associated with this section. Further, as several industry comments acknowledged, BAST is already an established part of BSEE regulations. Thus, since final § 250.107(c) is consistent with the statutory requirements of OCSLA and with existing § 250.107(c), any costs that might be attributable to the provision are part of the economic baseline. To the extent the commenter objects to, or wants to suggest improvements to, the process by which BSEE makes BAST determinations, the commenter may submit its views to BSEE. However, those views are beyond the scope of this rulemaking.

Costs for § 250.800—General

Comment—A commenter pointed out that the initial economic analysis did not include cost estimates for proposed § 250.800—General.

Response—BSEE disagrees with the suggestion that revised § 250.800 would impose new costs that should have been included in the economic analysis. That section of the final rule contains essentially the same requirements as existing § 250.800, except for new language added to proposed and final paragraph (c)(2) and new paragraph (d). The new language in paragraph (c)(2) prohibits the installation of new single bore production risers. However, there are no new costs resulting from this new language because BSEE has not approved installation of any new single bore production riser for the last 8 years; BSEE has only approved installation of dual bore risers over that time, and this now represents standard and longstanding industry practice. Therefore, the prohibition of new single bore risers is not a new development, and even assuming there are any costs associated with that prohibition, they are properly included in the baseline because the prohibition reflects existing industry and BSEE practice.

Similarly, new paragraph (d), which was added to the final rule based on comments received, also does not impose any new costs on operators. That paragraph provides general guidance for compliance with subpart H; specifically, that in case of any conflicts between any incorporated standard and any provision in subpart H, the specific regulatory provision controls.

The only other revisions to existing § 250.800 incorporate or clarify the applicability of industry standards, previously incorporated in other sections of BSEE's regulations, to production safety equipment (*e.g.,* productions safety systems on fixed leg platforms). As previously discussed, any costs attributable to incorporation of industry standards are properly included in the baseline because those standards represent generally accepted practices used by the industry in day-to-day operations, particularly those already codified in BSEE's regulations.

SPPE Certification

Comment—A commenter raised the concern that the initial economic analysis related to proposed § 250.801 (SPPE certification) did not discuss costs associated with BSDV certification. The commenter also asserted that the certification requirement was a BAST determination that did not comply with the BAST statute because BSEE did not demonstrate that certified valves perform better than non-certified valves.

Response—We disagree with the comment suggesting that the proposed requirement for certification of SPPE constitutes a BAST determination by the bureau and that such determination is deficient. There is no connection between the SPPE certification process and BAST determinations because, among other reasons, the certification process is not a technology; rather, certification is a verification process. In addition, BSEE has considered the costs of certification of BSDVs and other SPPE in the final economic analysis, as discussed in part V of this document.

Cost for Retaining Documentation

Comment—A commenter stated that costs associated with proposed § 250.802(e) (regarding retention of certain documentation on SPPE for 1 year after decommissioning) were not discussed or analyzed in the initial economic analysis. The commenter did not, however, provide an estimate of the potential costs involved with this proposed requirement.

Response—BSEE agrees with the comment, and the SPPE document retention requirement under final § 250.802(e) is now addressed in the final economic analysis as well as in the Paperwork Reduction Act (PRA) burden estimates that are discussed in part V of this document.

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[7] Existing § 250.107(c) provides that ‘‘You must use the best available and safest technology (BAST) *whenever practical* on all exploration, development, and production operations.’’ (Emphasis added.)

[8] The final economic analysis estimates that the total annual cost to all of the affected industry from the waiver provision would be $910.

SPPE Costs

Comment—A commenter asserted that potential costs under proposed § 250.806 were not included in the initial economic analysis.

Response—BSEE assumes that this comment refers to the existing § 250.806, which was reorganized and re-codified in §§ 250.801 and 250.802 of the final rule. Section 250.806 is now reserved. The provisions from § 250.806 of the existing regulations, now in final §§ 250.801 and 250.802, require certification that certain SPPE valves were manufactured under a quality assurance program standard recognized by BSEE, such as API Spec. Q1. Since those provisions were codified in the existing regulations, and rely on existing industry standards, any costs associated with those existing requirements that are retained in final §§ 250.801 and 250.802 are included in the economic baseline. The additional potential costs of complying with the new provisions of the certification requirement are included in the final economic analysis, as discussed in part V.

Costs for Floating Production Unit Safety Systems

Comment—In connection with proposed § 250.854 (Floating production units equipped with turrets and turret-mounted systems), a commenter asserted that costs associated with new requirements were not discussed or analyzed in the economic analysis.

Response—Section 250.854 addresses floating production units with either auto slew systems or swivel stacks. Floating production, storage, and offloading facilities (FPSOs) in the GOM are already in compliance with this section, so it will not result in new costs for existing FPSOs. There are no new costs for floating production units with an auto slew system because final § 250.854 does not require the installation of new equipment. If an operator uses an auto slew system, this provision simply states that the auto slew system must be integrated with the process safety system, which does not require any new activity or equipment.

Similarly, the requirement that a floating production unit with a swivel stack must have a hydrocarbon leak detection system tied in to the process safety system imposes no new costs. These facilities already have a leak detection system, as required in their approved Deepwater Operations Plans (DWOPs), since the FPSO's swivel stack is a critical leak path subject to longstanding DWOP leak detection conditions. Further, there are no additional costs resulting from the requirement to tie the leak detection systems into the process safety system because these requirements are longstanding conditions of approval under the DWOP process for floating production units.

Cost for Glycol Dehydration Units

Comment—A commenter referenced proposed § 250.857(b) and (c) (regarding installation of certain valves on glycol dehydration units), stating that there was no clarity on whether existing glycol dehydration units must comply with this requirement, and noted that if they do need to comply, those costs must be considered. The commenter requested that the final rule address the status of existing equipment.

Response—This requirement is based on API RP 14C, which is already incorporated into BSEE regulations. The final rule simply clarifies that the location of the valves needs to be as close to the glycol contact tower as possible. As previously explained, BSEE includes the costs for following industry standards and existing regulation as part of the economic baseline.

Firefighting Systems

Comment—A commenter noted that proposed new § 250.859 would require that certain firefighting systems comply with all of API RP 14G, while the corresponding provision in existing § 250.803(b)(8) only required firefighting systems to comply with section 5.2 of API RP 14G. The commenter asserted that the proposed change would have significant implications, and that the costs associated with the incorporation of the entire document were not considered in the initial economic analysis.

Response—BSEE does not agree that any costs associated with firefighting systems meeting any provisions of API RP 14G must be added to the costs of the rule. As previously stated, and as explained in the final economic analysis, any costs associated with following existing industry standards are part of the economic baseline. In addition, as previously explained, BSEE has revised final § 250.859(a) to require that firewater systems need to comply only with the relevant provisions of API RP 14G, which eliminates potential confusion as to whether firewater systems would have to meet new requirements under API RP 14G that currently do not apply to such systems.

Chemical Firefighting Systems

Comment—A commenter asserted that proposed § 250.860 (regarding chemical firefighting systems) included new requirements from an existing NTL, and that BSEE should have analyzed the costs of those requirements.

Response—BSEE disagrees. As already stated, any costs associated with following the guidance provided in existing NTLs, and now contained in this final rule, are part of the economic baseline. Consistent with OMB Circular A–4, the baseline includes all practices that are already incorporated into industry and regulatory standards, and that would continue even if the new regulations were never imposed. Since NTLs interpret, and provide guidance on how to comply with, existing regulations, BSEE expects that industry already follows the NTLs to comply with the relevant existing regulations and to ensure safety and reliability of operations.

Pressure Recording Devices

Comment—A commenter noted that proposed § 250.865(b) contained new requirements regarding pressure recording devices, and that there was no discussion in the proposed rule's preamble or the initial economic analysis concerning the need for and the costs of these new requirements.

Response—BSEE does not agree that there are new costs associated with this provision that need to be accounted for as costs in the economic analysis because the pressure recording requirements in paragraph (b) were already required by § 250.803(b)(1)(iii) of the existing regulations and, thus, are part of the economic baseline.

Atmospheric Vessels

Comment—A commenter asserted that proposed § 250.872(a), regarding atmospheric vessels, contained new requirements and that there was no discussion in the proposed rule or the initial economic analysis concerning the need for or costs of these new requirements.

Response—BSEE disagrees. Proposed—and now final—§ 250.872(a) requires compliance with API RP 500 and API RP 505, both of which are incorporated in existing BSEE regulations (*e.g.*, §§ 250.114, 250.802 250.803). Therefore, there are no new costs, beyond those included in the baseline, associated with this section.

Inspection Costs for Fire and Exhaust Heated Components

Comment—A commenter asserted that the estimated costs ($5,000) in the initial economic analysis for proposed

§ 250.876, regarding inspection of fired and exhaust heated components, were too low. The commenter suggested that a better cost estimate would be at least 3 or 4 times that amount, and that the ability to obtain a qualified third-party to inspect these components in the timeframe required may be difficult.

Response—BSEE agrees that these costs may be higher than what was originally estimated and has adjusted the costs appropriately in the final economic analysis.

3. Section-by-Section Summary and Responses to Comments

Definitions (§ 250.105)

Section Summary—This section provides definitions of terms used throughout part 250.

Regulatory text changes from the proposed rule—BSEE did not propose any changes to this section of the existing regulations in the proposed rule and has made no changes in the final rule.

Comment—One commenter suggested that BSEE add a definition for the term ‘‘platform’’ to the final rule.

Response—BSEE did not propose to define that term, and has decided not to add the commenter's suggested definition to the final rule. The word ‘‘platform’’ can have several meanings within BSEE's regulations, depending on where and how it is used. In addition, the suggested definition was specifically related to the commenter's concerns about future development of the Arctic OCS. BSEE recognizes the importance of the concerns related to future Arctic development and recently focused on Arctic-related issues in a separate final rulemaking, as already discussed in part IV.B.3.

What must I do to protect health, safety, property, and the environment? (§ 250.107)

Section summary –This section of the existing regulations lays out performance-based and other requirements that operators must meet to protect safety, health, property and the environment. Paragraph (c) of the existing regulation required the use of BAST whenever practical on all exploration, development and production operations, while paragraph (d) authorized the Director to require additional measures to ensure use of BAST.

Regulatory text changes from the proposed rule—BSEE proposed revisions to paragraph (c), and proposed to remove paragraph (d), in order to more closely track the BAST language in OCSLA and to provide additional clarity regarding how the BAST requirements would be implemented. Many of the comments on the proposed changes to this section supported the proposed language, although many industry commenters, while acknowledging issues or concerns related to the existing language, raised concerns related to the potential impact of the proposed language on existing facilities. In the final rule, BSEE has removed existing paragraph (d), as proposed.

However, based on the comments received, BSEE has reorganized and revised the proposed changes to paragraph (c). BSEE has revised final paragraph (c)(1) to track even more closely the language of the relevant OCSLA provision. Final paragraph (c)(2) revises the proposed language to further clarify and confirm that compliance with BSEE regulations will be presumed to constitute the use of BAST, unless and until BSEE's Director determines that other technologies are required in accordance with final paragraph (c)(1). In addition, final paragraph (c)(3) revises the proposed BAST exception language to clarify that the Director may waive the requirement to use BAST for a category of existing operations if the Director determines that use of BAST for that category of operations would be impracticable. That paragraph also clarifies that the Director may waive the requirement to use BAST for an existing operation, if the operator demonstrates, and the Director determines, that using BAST in that operation would be impracticable.

Comments and responses—BSEE received public comments on the following issues related to the proposed revisions to § 250.107 and responds as follows:

Whether Proposed BAST Revision Not Needed/Premature

Comment—Many comments asserted that the proposed changes to § 250.107 are premature and should be delayed until BSEE develops a detailed process for making and implementing BAST determinations and the National Academy of Engineering (NAE) completes a report on BAST.

Response—BSEE disagrees with these comments. BSEE did not propose any changes to or request comments on the internal processes that BSEE uses to evaluate technologies in making BAST determinations. The primary objective of the proposed changes was to better align the regulatory provisions with the statutory mandate.

That statutory provision requires:

> On all new drilling and production operations and, wherever practicable, on existing operations, the use of the best available and safest technologies which the Secretary determines to be economically feasible, wherever failure of equipment would have a significant effect on safety, health, or the environment, except where the Secretary determines that the incremental benefits are clearly insufficient to justify the incremental costs of utilizing such technologies. (43 U.S.C. 1347(b).)

In OCSLA, Congress directed the Secretary to require the use of BAST in these circumstances. Over a period of years, the regulatory language used to implement this statutory provision was modified as the offshore regulations were revised. As noted in the preamble of the proposed rule, BSEE believes that the existing regulatory language does not give full effect to the BAST obligations contained in the Act. (*See* 78 FR 52243.)

Revision of the BAST language in existing § 250.107 is also consistent with the recommendations of the Ocean Energy Safety Advisory Committee (OESC), which was formed following the *Deepwater Horizon* incident to provide advice to the Secretary on issues related to offshore safety. The OESC, which consisted of representatives from industry, Federal government agencies, non-governmental organizations and the academic community, specifically recommended that BSEE revise the BAST regulations to more accurately reflect the statutory language and to ensure the effective implementation of a BAST program.

Thus, BSEE does not believe that the proposed regulatory changes need to be delayed until the internal BAST implementation process is fully developed. In any case, since publication of the proposed rule in 2013, BSEE has developed an internal process defining how technology will be evaluated by BSEE using a transparent and data-driven approach. This internal process was developed with significant input from many industry organizations and was discussed in detail at the BAST Conference hosted by the Ocean Energy Safety Institute on November 12, 2015. Moreover, the NAE final report on BAST, published in January 2014, was considered by BSEE in the development of this internal process. More information about the BAST Conference, NAE final report, and the BAST determination process is currently available on BSEE's BAST Web page at *http://www.bsee.gov/bast/*. Pre-publication copies of the NAE final report are available through BSEE's BAST Web page which links to NAE's Web site, or by going directly to NAE's Web site at:*http://*

www8.nationalacademies.org/onpinews/newsitem.aspx?RecordID=18545.

Whether Proposed Changes to BAST Language Are Unnecessary

Comment—Some commenters asserted that regulatory changes are unnecessary since BSEE already implements an effective BAST program through the combination of regulations, industry standards, plan and permit approvals, alternative compliance approvals, departure approvals, platform verification, inspection and enforcement, data collection, training, and the safety alert program.

Response—While BSEE agrees that it already maintains an effective BAST program, it nevertheless believes that changes to the existing regulatory language are necessary. As described in the proposed rule, and in prior responses to other comments, the changes to existing § 250.107(c) provide greater clarity and ensure consistency between the regulation and the language contained in OCSLA. BSEE agrees that, in many cases, existing regulations (including standards that are incorporated by reference in the regulations) will represent BAST. This is consistent with the intent of the language in existing § 250.107(c).[9] In the final regulations, § 250.107(c)(2) confirms and clarifies that compliance with the regulations is presumed to constitute BAST unless and until the Director makes a determination that other equipment or technology is required as BAST.

Whether Revised BAST Provisions Would Be Disruptive

Comment—Several commenters stated that the proposed rule changes would disrupt an already established BAST process, that they would create uncertainty in the established BAST process, and that the impact of this uncertainty should be considered. Other commenters asserted that industry standards represent BAST.

Response—BSEE does not agree that the proposed or final revisions to § 250.107 would create more uncertainty. The proposed rule language essentially mirrored statutory language that has been in place since 1978 and eliminated ambiguous language that was perceived as potentially inconsistent with the statute. This final rule presents that language in an even clearer way and provides additional clarification on how BAST will be applied, while maintaining and improving alignment with the statutory language. For example, existing § 250.107 did not provide any express parameters for identifying when compliance with the regulations would no longer be considered the use of BAST. The final rule clarifies that this situation would occur when the Director makes a formal BAST determination that specific technology is required.

In addition, BSEE does not agree that consensus-based industry standards that have not been incorporated in applicable BSEE regulations automatically represent BAST. BSEE has incorporated by reference many industry standards into its regulations, and they play an important role in establishing a minimum baseline for the safety of offshore activities and equipment. And compliance with a regulation that incorporates a standard will be presumed to be the use of BAST, unless and until the Director makes a determination to require other technology(ies). However, a determination as to whether a specific, non-incorporated standard reflects BAST would need to be made by the Director on a case-by-case basis.

Whether BAST Determination Process Is Unclear

Comment—Several commenters asserted that the proposed rulemaking was unclear regarding what factors and thresholds BSEE will use when deciding whether it will require an operator to use a certain technology as BAST and how long the operator has to come into compliance. Other commenters asserted that existing facilities should be "grandfathered" out of any new BAST requirements.

Response—BSEE has revised § 250.107(c) of the final rule to clarify that the BSEE Director will determine when to apply a particular technology as BAST. This change is consistent with the OCSLA BAST language (and a prior delegation of the Secretary's authority to the Director). Specifically, the Director will:

- Determine when the failure of equipment would have a significant effect on safety, health, or the environment;
- Determine the economic feasibility of the technology;
- Decide whether the incremental benefits are clearly insufficient to justify the incremental costs of utilizing such technologies;
- Decide whether to waive the use of BAST for a category of existing operations because the use of BAST would not be practicable for those operations; and
- Decide whether to waive the use of BAST for an existing operation if the operator of an existing facility requests a waiver and demonstrates, and the Director determines, that the use of BAST in that existing operation would not be practicable.

BSEE does not agree, however, that an automatic "grandfathering" provision for existing facilities is appropriate. The language in OCSLA specifically makes BAST applicable to existing operations, provided that it is practicable and that the other determinations specified by the statute are made. BSEE has, however, clarified in final § 250.107(c)(3) the process for requesting a waiver from the use of BAST on existing facilities based on a demonstration by the operator, and a determination by the Director, of impracticability.

Economic Feasibility, Practicability, and Other Considerations in BAST Determinations

Comment—Several comments addressed the criteria and process for making BAST determinations with respect to economic feasibility, practicability, and cost-benefit analyses regarding BAST. It was suggested that BSEE define and publish its determinations for the terms "economically feasible" and "practicable," and designate a pre-determined length of time for existing operations to come into compliance.

Commenters also suggested that BAST waivers or exceptions should be accompanied by a description of how the incremental benefits of using BAST were less than the incremental costs and should be subject to public review and comment. Commenters asserted that BSEE should incorporate the factors and thresholds on which it will determine which technology is BAST prior to finalizing the proposed rule, and that BSEE should be the ultimate decisionmaker as to BAST requirements.

Additionally, one commenter stated that the proposed text increases uncertainty in that it appears to require operators to demonstrate that the incremental benefits of using BAST are insufficient to justify the costs in order to obtain an exception, which improperly shifts the burden to the operator.

Response—BSEE agrees that some clarifications and revisions of the benefit-cost determination and the proposed exception language are appropriate. Consistent with Congress' intent concerning the evaluation of costs and benefits, final paragraph (c)(1) now clarifies that the Director will determine whether the incremental benefits of certain technology are clearly insufficient to justify the incremental costs of utilizing BAST.[10] Accordingly, BSEE has removed the cost-benefit language in the exception provision of proposed paragraph (c)(2) from the final rule.[11] In addition, final paragraph (c)(3) clarifies that the Director may waive a BAST requirement for an existing operation if the waiver request demonstrates, and the Director determines, that the use of the BAST in question is not practicable. This is also consistent with Congress' intent that an operator show that use of BAST is not practicable for an existing operation: "It is, of course, the responsibility of an operator on an existing operation to demonstrate why application of a new technology would not be 'practicable'." H.R. Rep. No. 95–1474, at 109 (Aug. 10, 1978).

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[9] Existing § 250.107(c) states that "In general, we consider your compliance with BSEE regulations to be the use of BAST."

BSEE does not agree, however, with the comments suggesting that the final rule include definitions or specific factors or "thresholds" for economic feasibility and practicability on which the Director will make BAST determinations or waiver decisions, respectively. OCSLA requires that BSEE (through a delegation from the Secretary) make BAST determinations, and BSEE has developed its formal process for BAST determinations in line with that authority. Every BAST determination requires a benefit-cost analysis of its own, to demonstrate that the BAST candidate technology is economically feasible and that it will result in benefits that are not clearly insufficient to justify the costs. For any future BAST determinations, BSEE will specify what is economically feasible for BAST purposes through rulemaking, except in cases involving emergency safety issues. These decisions will be largely technology- and fact-specific, and it would be premature to specify in this rule how such facts will be considered in particular cases.

In any case, the proposed and final revisions of the language in § 250.107(c) do not constitute a BAST determination and do not address BSEE's internal processes for making specific BAST determinations. BSEE revised this section in the final rule in large part to clarify that the BSEE Director will determine when to make those specific BAST determinations in accordance with the statutory criteria.

Similarly, "practicability" demonstrations and decisions for waiver requests will depend on the circumstances of the existing operations at issue. However, BSEE expects that unique factors, such as the types or ages of specific facilities or environmental conditions, that make installation of BAST impracticable will be relevant in this decisonmaking.

Time Requirements for BAST Determination Process

Comment—One comment requested that BSEE place a time limit on itself to review requests under the proposed provision allowing an operator to request an exception from using BAST by demonstrating that the incremental benefits are clearly insufficient to justify the incremental costs. The commenter said that BSEE's estimate that it would take an operator 5 hours to prepare the information to satisfy the proposed requirements for an exception is inadequate. The commenter asserted that it would take many more hours to compile, analyze and prepare information that demonstrates to BSEE that the operator's technology fits the exception to BAST. The commenter also asserted that BSEE will require far more time than predicted to analyze and review the information required by the proposed exception provision. Furthermore, the commenter stated that BSEE has not provided any guidance or process for implementing this proposed requirement.

Response—BSEE does not agree with the suggestion that it needs to establish a more-detailed BAST exception (waiver) process or provide guidance for waivers prior to revising § 250.107(c). BSEE may, however, provide guidance on the implementation of the BAST requirements, including the waiver process, in the future.

The commenter's concern that a request for an exception under the proposed language would likely take many hours to complete and review has been effectively resolved by the revisions in final § 250.107(c)(3), which now provides that the operator only needs to demonstrate that use of BAST is not practicable (*i.e.*, the operator does not need to demonstrate that the incremental costs exceed the incremental benefits). BSEE's current estimates as to the time needed for operators and BSEE to take the actions contemplated under the final waiver language are contained in the final economic analysis and the PRA portion of part V of this document.

Definition of "Failure"

Comment—One commenter requested clarification as to the definition of "failure" in the context of the proposed § 250.107(c)(1), which stated that "[w]herever failure of equipment may have a significant effect on safety, health, or the environment . . . ." the use of BAST is required. The commenter stated that "failure" could have multiple meanings including mechanical failure, electrical failure, or test failure.

Response—BSEE does not agree that a specific definition of "failure" is necessary. The relevant language is drawn directly from OCSLA, which states that BAST must be used "[w]herever failure of equipment would have a significant effect on safety, health, or the environment . . ." BSEE used this language in the proposed and final rule to provide parameters for the types of failure that trigger the OCSLA requirement to use BAST. The Director would not require the use of BAST equipment if failures of that equipment would not result in a significant effect on safety, health, or the environment. What constitutes failure of equipment depends upon the context of the operation and equipment. Under this section, BSEE is addressing equipment failure as a general matter. Specific provisions related to equipment functionality are addressed in existing regulatory provisions and throughout this final rule.

BAST Discretion and Waiver

Comment—One commenter requested clarification on proposed § 250.107(c)(1)(ii), which proposed that operators must use economically feasible BAST, "wherever practicable on existing operations." The commenter requested clarification as to whether, at the discretion of BSEE personnel, existing equipment that is properly operating under normal conditions would need to be replaced even if it did not pose a threat of a malfunction or failure.

Response—In the final rule, BSEE revised the language of proposed § 250.107(c) to clarify that the Director will make the BAST determinations regarding economic feasibility and other factors listed in final paragraph (c)(1). BSEE has also clarified the language in final paragraph (c) on the application of BAST to existing operations, consistent with the OCSLA BAST language. Under final § 250.107(c)(3), the Director may waive the requirement to use BAST for a category of existing operations if the Director determines that use of BAST would be impracticable for that category.

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[10] *See, e.g.*, Report by the Ad Hoc Select Committee on the [OCS], Rep. No. 95–590 at 159 (Aug. 29, 1977) ("A balancing of danger and costs is required. The focus of this [BAST] provision is to require that operations in the [OCS] on leases are to be the safest possible. The regulator is to balance the significance of the procedure or piece of equipment on safety. If adoption of new techniques or equipment would significantly increase safety, and would not be an undue economic hardship on the lessee or permittee, he is to require it. In determining whether an undue economic hardship is involved, the regulator is to weigh incremental benefits, against incremental costs.") *See also* H.R. Rep. No. 95–1474, at 109 (Aug. 10, 1978) ("[C]onsiderations of costs and benefits should also be done by the regulating agency . . . .")

[11] Since the final waiver provision does not require the operator to make an incremental cost-benefit demonstration, the comment suggesting that BSEE make the cost-benefit factors for a waiver or exception available for public review is moot.

In addition, the Director may waive the requirement to use BAST for an existing operation if the operator of an existing facility submits a waiver request demonstrating, and the Director then determines, "that the use of BAST would not be practicable" in that operation. For example, if an operator demonstrates, and the Director determines, that such technology(ies) would be unduly difficult or impossible to retrofit at an existing facility, the Director could grant the operator a waiver. In the absence of a waiver, however, existing operations must comply with BAST. As explained in response to other comments, OCSLA expressly requires the use of BAST for existing operations, whenever practicable, so Congress did not view existing technologies inherently to represent BAST.

Regulatory Flexibility Act Compliance Regarding BAST

Comment—Several commenters asserted that BSEE had not met its obligations under the RFA with regard to the proposed BAST language; *i.e.*, that it had not conducted a regulatory flexibility analysis to assess the impact of the proposed provision on small entities. Commenters also noted that, in the proposed rule, BSEE concluded that this rule is not likely to have a significant economic impact and, therefore, an initial RFA analysis was not required by the RFA, even though BSEE provided a contractor-prepared initial regulatory flexibility analysis in support of the certification. The commenters asserted, however, that this analysis was inadequate because BSEE considered only the estimated impacts of proposed revisions to subpart H and the estimated costs of seven provisions of subpart H. The analysis—and, by extension, the resulting certification of no significant impact—omits any consideration of estimated impacts from BSEE's proposed revision to the BAST rule in subpart A. In addition, several comments assert that by eliminating the longstanding general equivalence of regulatory compliance with BAST, BSEE's proposed revisions to the BAST rule would have significant impacts upon regulated entities, which BSEE had failed to consider, because that change would create uncertainty for regulated entities pertaining to whether their planned and ongoing operations meet BAST.

Response—BSEE does not agree that it failed to comply with the RFA regarding the cost impact on small entities of the proposed revisions to § 250.107(c). As previously explained in part IV.C.2, the proposed and now-final revisions to the BAST language impose no significant new costs on any entity, small or otherwise. The final revisions to § 250.107(c) clarify the intent of the existing regulation and better align the regulatory language with the longstanding BAST language in OCSLA. In addition, the commenters' claim regarding the costs of the proposed deletion of former language equating compliance with BSEE regulations with BAST is moot, since the final rule now includes language maintaining that longstanding regulatory principle.

As stated in previous responses, since the revisions to § 250.107(c) do not establish a new BAST program or new BAST requirements, but rather clarify and incorporate existing baseline statutory and regulatory principles governing BAST compliance, they create no new costs for small entities.[12]

Whether Proposed BAST Rule Constitutes a "Significant Regulatory Action"

Comment—Commenters asserted that this rule constitutes a "significant regulatory action" which should trigger a review by the Office of Information and Regulatory Affairs (OIRA) of its anticipated costs and benefits. The commenters noted that the proposed rule and its supporting documentation indicated that both BSEE and OIRA determined that this rule is not a significant rulemaking under E.O. 12866. Commenters asserted that both the proposed rule and the initial economic analysis considered only the potential costs and benefits of the proposed regulatory provisions of subpart H. Commenters suggested that this analysis—and by extension, the resulting determination that the proposed rule would not be significant—omits any consideration of estimated impacts from BSEE's proposed revision to the BAST rule in subpart A. Commenters also asserted that BSEE omitted the costs arising from the significant uncertainty the proposed BAST rule interjects into the operations and decision making by regulated entities that have long depended upon BSEE's regulations and regulatory process for implementing BAST in their offshore planning.

Response—BSEE does not agree that its and OIRA's determination that this is not a significant rulemaking under E.O. 12866 is incorrect, especially with regard to the revised BAST language. As previously explained in responses to other comments, the revisions to § 250.107(c) do not create a new BAST program or reflect any new BAST determinations, but rather merely clarify and incorporate longstanding baseline statutory and regulatory principles regarding BAST compliance, and, thus, impose no new costs on operators. The concerns related to the loss of certainty provided by regulatory compliance presumptively constituting BAST are likewise mitigated by the revisions BSEE made from the proposed to the final rule.

Definition of BAST

Comment—One commenter suggested that BSEE has acknowledged that technologies already in place are BAST. The commenter also proposed language that recognizes that existing technologies meet the intent of OCSLA.

Response—BSEE does not agree that the commenter's suggested language change is necessary or appropriate. The proposed concept is not consistent with OCSLA or its implementing regulations. Existing BSEE regulations at § 250.105 define BAST as "the best available and safest technologies that the BSEE Director determines to be economically feasible wherever failure of equipment would have a significant effect on safety, health, or the environment." This existing definition is consistent with the language and intent of OCSLA and clarifies that the Director may make BAST determinations on an industry-wide basis or for different classes or categories of operations based on economic feasibility. BSEE revised the BAST provisions under § 250.107(c) in the final rule to be consistent with OCSLA and, thus, with the existing definition. The revisions also clarify that the Director will determine when to deem specific technology—not already required by BSEE's regulations—to be BAST, using the criteria specified in OCSLA, and that the Director also will determine when to waive the application of BAST to existing operations. Moreover, since OCSLA expressly requires the use of BAST, as determined in accordance with OCSLA, for existing operations whenever practicable, we can conclude that Congress did not view all "technologies already in place" or "existing technologies" inherently to represent BAST.

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[12] As explained elsewhere in part IV.C.2, any costs associated with BAST waiver requests may be considered part of the economic baseline. Nonetheless, BSEE has included those minimal costs in the final economic analysis and in the Paperwork Reduction Act burden estimate in part V of this document.

How must I install, maintain, and operate electrical equipment? (§ 250.114)

Section summary—This section of the existing regulations requires that areas be classified, and electrical systems installed, in compliance with certain incorporated electrical standards and that employees who maintain such systems have appropriate expertise. BSEE did not propose any changes to this section; however, BSEE has revised the section heading in the final rule to include "maintain," in order to more fully and accurately capture the existing requirements of this section.

Service Fees (§ 250.125)

Section summary—This existing section contains fees charged to operators for services BSEE provides, such as processing various applications. The final rule will revise this section to update the cross-references in paragraphs (a)(5) through (a)(10) to conform to the recodification of § 250.802(e) to § 250.842, as discussed later in this document. The entire table is republished in this final rule for completeness.

Regulatory text changes from the proposed rule—In the final rule, BSEE has revised the fees from proposed § 250.842 in order to reflect the current fee amounts in existing § 250.802(e), some of which have changed since the proposed rule was published. BSEE revised final paragraphs (a)(5) and (a)(6) to clarify that facility visits are pre-production inspections.

Comments and responses—BSEE did not receive any comments on this service fees section.

Documents Incorporated by Reference (§ 250.198)

Section summary—Section 250.198 of the existing regulations contains provisions regarding how BSEE incorporates documents by reference in BSEE's regulations, lists all of the documents BSEE incorporates by reference in part 250, and confirms BSEE's general expectations for compliance with those documents. The requirements for complying with a specific incorporated document can be found where the document is referenced in the regulations, as specified in § 250.198. As proposed, the final rule incorporates by reference one standard (API 570) that had not previously been incorporated in § 250.198, and requires compliance with API 570 in various sections of the proposed rule (as described in part II.B of this document). As proposed and as explained elsewhere, various sections of the final rule require compliance with 8 standards that had previously been incorporated by reference in existing § 250.198; thus, the final rule revises § 250.198, as proposed, by adding the section numbers for those new requirements to the appropriate subparagraphs in § 250.198.

Regulatory text changes from the proposed rule – In the final rule, BSEE has revised proposed paragraph (h)(51) to include references to the incorporation by reference of the identified documents at §§ 250.292 and 250.733. Final paragraph (h)(70) was also revised to include references to the incorporation by reference of the identified documents at §§ 250.730 and 250.833.[13] The references to sections §§ 250.292 and 250.833 were inadvertently omitted in the proposed rule. Similarly, the final rule makes minor, non-substantive punctuation and related changes to paragraphs (h)(93) through (h)(95), which were added to § 250.198 by separate final rules published after this proposed rule.[14] References were also updated in other sections to reflect the most recent reaffirmations of relevant documents.

Comments and responses—BSEE received public comments on this section and responds to the comments as follows:

Standards Already Incorporated in Other Parts of the Regulations

Comment—One commenter observed that some of the standards incorporated by reference into the proposed rule are already incorporated into other parts of the existing regulations.

Response—Standards may be incorporated into multiple parts of the regulations, as when similar equipment may be used for different operations subject to different regulatory provisions. For example, subparts H and I require similar considerations for design; incorporating the same standards in relevant sections of both subparts ensures that the production safety system and the platform or structure are integrated. In other cases, BSEE has decided that the same standards should apply for other reasons. For example, pipelines, which are regulated under subpart J, and certain aspects of production safety systems related to piping, regulated under subpart H, implicate several of the same standards and BSEE has determined that it is important to incorporate each relevant standard in all regulatory sections to which it applies.

Request of BAST Determination for Incorporated Standards

Comment—One commenter requested an explanation of how BSEE determined that each standard proposed for incorporation in the regulations was the best available and safest technology and operating practice for the OCS.

Response—The incorporation of industry standards does not reflect a specific BAST determination by BSEE. The authority to incorporate industry standards into BSEE regulations is separate from the BAST authority. The National Technology Transfer and Advancement Act (NTTAA) mandates that Federal agencies use technical standards developed or adopted by voluntary consensus standards bodies, as opposed to using government-unique standards, where practicable and consistent with applicable law. These criteria for rulemaking are different from those applicable to BAST determinations under OCSLA and § 250.107(c). BSEE follows the requirements of the NTTAA and the relevant guidance in OMB Circular A–119 when incorporating standards into its regulations.

Availability of Standards for Public Review

Comment—Some commenters expressed concern about the availability of the standards incorporated by reference in the proposed rule. They were concerned that many standards are not easily accessible or generally available to the public as part of the rulemaking process or thereafter. One commenter estimates that the public's burden for purchasing the industry standards that were not made available to the public would be approximately $5,900. This amount includes all the standards referenced at § 250.198 that are not available to the public free-of-charge. Some commenters also stated that the public cost burden makes meaningful public participation in rulemaking cost-prohibitive and proposes that BSEE change its process for incorporating standards.

Response—As discussed in part II.C of this document, all standards incorporated by reference in BSEE's regulations are available to view for free at BSEE offices. In addition, the public may view API documents incorporated in BSEE regulations free of charge on API's Web site (*http://www.api.org/publications-standards-and-statistics/publications/government-cited-safety-documents*). Some standards organizations make their standards available for viewing on ANSI's Web page (*http://ibr.ansi.org/Standards/Default.aspx*). In addition, documents from other standards organizations may be purchased directly from those organizations. Standards may be copyright protected under U.S. and international law. Federal law, including the NTTAA, upon which BSEE relies to incorporate industry consensus standards by reference, does not eliminate the availability of copyright protection for industry-developed consensus standards incorporated by reference into Federal regulations.[15] While BSEE works to maximize the accessibility of incorporated documents, and provides directions to where the materials are reasonably available pursuant to Office of **Federal Register** (OFR) requirements, it also must respect the publisher's copyright. OFR's regulations state that, if a proposed rule does not meet the applicable requirements for incorporation by reference, the OFR Director will return the proposed rule to the agency (*see* 1 CFR 1.3); that did not occur here. There is no requirement that such documents be available either online or for free. (*See* 79 FR 66269–72 (Nov. 7, 2014), explaining why OFR declined to include such requirements in its regulations on incorporation by reference.)

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[13] The references to §§ 250.730 and 250.733 are necessary because those sections were added to 30 CFR part 250 as part of the final rule, "Blowout Preventer Systems and Well Control" published on April 29, 2016 (81 FR 25888).

[14] Those final rules are the Blowout Preventer Systems and Well Control Rule, at 81 FR 26015, and the Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf Rule, 81 FR 46478, 46560 (July 15, 2016).

The estimate provided by the commenter ($5,900 to purchase the standards that were not made available to the public for this rulemaking) includes standards already incorporated into existing BSEE regulations. The commenter stated that the $5,900 estimate includes all the standards referenced in § 250.198 that are not available to the public free-of-charge. The estimated cost, therefore, includes standards that are not incorporated into subpart H or related to this rulemaking and overstates the costs associated with this rulemaking.

Conflicts Between Incorporated Standards and BSEE Regulations

Comment—Commenters expressed concern that there is a lack of clarity regarding precedence when a standard conflicts with a regulation. Commenters stated that the regulations should specifically state that wherever BSEE's regulations are more specific or provide more stringent requirements than those listed in an industry standard, BSEE's regulations take precedence.

Response—BSEE has provided clarification, in final § 250.800(d), that if there is a conflict between the standards incorporated through this rulemaking and other provisions of subpart H, the operator must follow the regulations.

Public Review and Comment on Incorporated Standards

Comment—Commenters asserted that: BSEE should go through the process of public review and comment prior to incorporating a new or updated standard: There should be at least a 30-day public review and comment period on proposed rulemakings to update an industry standard; and BSEE should provide a technical support document for that proposed rulemaking showing how BSEE determined the updated standard to be the best available and safest technology and operating practices and explaining why incorporating the industry standard results in a safety improvement.

Response—The commenters' requests as to how BSEE should incorporate industry standards in the future is beyond the scope of this rulemaking. As previously discussed, in this rulemaking BSEE made all of the documents incorporated by reference available for public review in connection with the comment period provided for the proposed rule and continues to make publicly available at its office all of the standards incorporated by reference in the final rule.

In any event, in its rulemakings, BSEE complies with the NTTAA requirement that an agency "use standards developed or adopted by voluntary consensus standards bodies rather than government-unique standards, except where inconsistent with applicable law or otherwise impractical." (OMB Circular A–119 at p. 13). BSEE also complies with the OFR regulations governing incorporation by reference. (*See* 1 CFR part 51.) Those regulations also specify the process for updating an incorporated standard at § 51.11(a), and BSEE complies with those requirements, including seeking approval by OFR for a change to a standard incorporated by reference in a final rule. BSEE generally provides for public notice and comment through proposed rulemaking when incorporating a new standard into its regulations.[16]

Finally, as previously explained, the incorporation of industry standards does not reflect a specific BAST determination by BSEE; those actions derive from separate authorities and are governed by different criteria.

Updating Standards Incorporated in the Regulations

Comment—Commenters suggested that BSEE should: Review all industry standards listed in § 250.198 to eliminate discontinued standards; update standards for which newer versions have been published, if BSEE determines the updated standard version provides BAST and operating practice improvements; and eliminate standards that no longer represent BAST and best operating practices.

Response—This comment, seeking future action by BSEE to amend § 250.198, is also outside the scope of this rulemaking. BSEE reiterates that a decision to incorporate, or revise an existing incorporation of a standard is separate from specific BAST determinations. Nonetheless, BSEE engages in retrospective review of its regulations in accordance with E.O. 13563 and E.O. 13610 "to ensure, among other things, that regulations incorporating standards by reference are updated on a timely basis . . . ." (OMB Circular A–119 at p. 4). In fact, BSEE has already begun reviewing many of the standards incorporated in the existing regulations and will provide additional information regarding its review when appropriate. If BSEE decides that some updating of incorporated standards (*e.g.,* by referencing new editions of existing standards, or replacing previously incorporated standards with different standards, or simply deleting outdated standards) is warranted, it will explain its position through future rulemakings, as necessary. Of course, BSEE may also decide, for appropriate reasons, to keep a previously incorporated edition of a standard in the regulations even if there is an updated edition.

Tubing and Wellhead Equipment (§ 250.518)

Section summary—Paragraph (d) of existing § 250.518 requires that subsurface safety equipment be installed, maintained, and tested in compliance with the applicable provisions of subpart H. BSEE proposed to revise this section to include updated cross-references to new section numbers in subpart H.

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[15] *See, e.g.,* Incorporation by Reference final rule, Office of the Federal Register, 79 FR 66267, 66273 (Nov. 7, 2014) ("[T]he NTTAA [has] not eliminated the availability of copyright protection for privately developed codes and standards that are referenced in or incorporated into federal regulations. Therefore, we cannot issue regulations that could be interpreted as removing copyright protection from IBR'd standards.")

[16] Under certain circumstances, existing § 250.198(a)(2) authorizes BSEE to incorporate a newer edition of an industry standard through a direct final; however, that authority was not exercised in this rulemaking.

Regulatory text changes from the proposed rule—BSEE corrected the section number in the final rule to "§ 250.518," since the citation ("§ 250.517") used in the proposed rule was in error.

Incorrect Section Number

Comment—A commenter pointed out that the proposed revision actually belongs in existing § 250.518.

Response—BSEE agrees and has corrected the section number in the final rule to § 250.518 (Tubing and wellhead equipment).

Tubing and Wellhead Equipment (§ 250.619)

Section summary—Paragraph (e) of § 250.619 of the existing rule requires that subsurface safety equipment be installed, maintained, and tested in compliance with the applicable provisions of subpart H. BSEE proposed to revise this section to include updated cross-references to the new section numbers in subpart H.

Regulatory text changes from the proposed rule—BSEE updated the section number in the final rule to "§ 250.619" because the citation used in the proposed rule ("§ 250.618") was in error.

Incorrect Section Number

Comment—A commenter pointed out that the proposed revisions actually belong in § 250.619, not § 250.618.

Response—BSEE agrees and has corrected the section number to "§ 250.619" in the final rule.

General (§ 250.800)

Section summary—This section of the existing regulations established general requirements for the design, installation, use, maintenance, and testing of production safety equipment, including production safety systems to be used in subfreezing climates, to ensure safety and to protect the environment. This section of the final rule retains most of those requirements and further clarifies the design requirements for production safety equipment. In particular, BSEE added a new paragraph (b) to the final rule, as proposed, specifying the industry standard—API RP 14J, Recommended Practice for Design of Risers for FPSs and TLPs—that operators must follow for new production systems on fixed leg platforms. In the final rule, BSEE revised existing paragraph (b) and redesignated it as paragraph (c), which retains the existing requirement that new floating production systems (FPSs) comply with API RP 14J. Existing paragraph (b) also required new FPSs to comply with the drilling and production riser standards of API RP 2RD, Recommended Practice for Design of Risers for FPSs and TLPs; final paragraph (c), as proposed, omits the reference to the drilling standards, but retains the requirement for compliance with the production riser standards of API RP 2RD.

Final paragraph (c), as proposed, also provides examples of FPSs (*e.g.,* column-stabilized-units (CSUs); FPSOs; TLPs; and spars) and revises the existing stationkeeping system requirements for new floating facilities by adding a reference to API RP 2SM, Design, Manufacture, Installation, and Maintenance of Synthetic Fiber Ropes for Offshore Mooring. In addition, BSEE proposed in paragraph (c) to prohibit installation of single bore production risers on floating production facilities beginning 1 year after the publication date of the final rule.

Regulatory text changes from the proposed rule—After consideration of public comments, BSEE removed the proposed provision that would have allowed operators 1 year after publication of the final rule to comply with the prohibition against installing new single bore production risers. Thus, final paragraph (c)(2) now prohibits the installation of single bore production risers from floating facilities as of the effective date of the final rule.

BSEE also added the parenthetical "(*i.e.,* anchoring and mooring)" after the word "stationkeeping" to final paragraphs (c)(3) and (c)(4) in order to clarify the types of stationkeeping systems for floating production facilities to which those paragraphs apply. Those revisions also clarify that this provision is not intended to regulate the design of the dynamic positioning system (*i.e.,* the propulsion system); rather, they will simply ensure that the potential impacts an anchoring or mooring system could have on an FPS are considered during design of the production process system. (For example, the buoy of a turret-mounted FPS is a structural element of the production system, while the mooring system may also affect the production system.)

Based on public comments, BSEE also added a new paragraph (d) to clarify that if there are differences between the incorporated industry standards and the regulations, the operator must follow the regulations. Finally, BSEE added new paragraphs (e) and (f) to point out that operators may submit requests to use alternate procedures or equipment or for a departure from the subpart H regulations under existing §§ 250.141 and 250.142, respectively.

Comments and responses—BSEE received comments on several issues related to dual bore and single bore risers under this proposed section and responds to the comments as follows:

Dual Bore Production Risers/Prohibition on New Installation of Single Bore Risers

Comment—Some commenters took issue with the requirement for dual barrier production risers, stating that the term "production riser" may have several meanings. Commenters asserted that dual barrier production risers do not need to be used when subsea trees are in place, but accepted that dual barrier production risers are appropriate when using dry trees. Commenters also stated that using single barrier production risers downstream from subsea trees is a widely-accepted industry practice and that "it has generally been considered safe practice to complete wells through [an] outer riser, using mud weight and the outer riser to provide two barriers with a surface blow out preventer having at least two rams." Commenters asserted that requiring dual barrier risers downstream from subsea trees would be uneconomical or impossible. Commenters stated that where subsea trees are used, the tree provides a failsafe barrier to the ocean and, thus, that using single barrier risers downstream of subsea trees is a safe and acceptable practice. Commenters asserted that "a blanket ban on one particular type of riser configuration and operation does not comply with the statutory requirement for BAST or with the industry experience" and urged BSEE to reconsider the proposed rule.

Response—Final § 250.800(c)(2) only applies to the installation of production risers from new FPSs.[17] The regulations do not require operators to discontinue use of single-bore production risers that are already in place. The prohibition of installation of single bore production risers from new floating production facilities does not apply to single bore pipeline or flowline risers. BSEE does not consider the pipeline or flowline from a subsea tree to the host facility to be a production riser; rather BSEE considers it a pipeline or flowline riser. BSEE recognizes that the use of single bore pipeline or flowline risers is a widely-accepted practice that allows for cost-effective hydrocarbon production. If there are any questions about what qualifies as a production riser, the operator may contact the appropriate District Manager.

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[17] The requirements for non-production risers used during drilling and well completion operations are addressed in existing § 250.733(b)(2) and are not addressed here.

Comment—Several commenters expressed concern about how the prohibition on installation of single bore production risers will affect existing single bore production risers. Commenters asserted that this technology is acceptable in some applications, and that BSEE should allow future uses of single bore production risers in certain circumstances given that such risers may allow for production from reservoirs that would otherwise be uneconomical. Commenters stated that the preamble of the proposed rule did not provide any detail on why BSEE believes this situation to be unacceptable and asked that BSEE provide justification for prohibiting a technology that has not been proven to be problematic. Furthermore, the commenters asked why, if BSEE believes this practice to be unsafe, BSEE would allow this practice to be available for up to a year after the publication of the final rule.

Commenters also recommended revising the regulatory text to confirm that operators can seek relief from the requirements of subpart H where appropriate.

Response—This section of the proposed and final rule does not address drilling, flowline, or pipeline risers; it only addresses single bore production risers installed on FPSs after the effective date of the rule. Moreover, the concerns about the prohibition on installation of single bore risers is academic, since it has been more than 8 years since BSEE approved the installation of any new single bore production risers; thus, in effect, the regulatory prohibition reflects longstanding BSEE policy and industry practice.[18]

As to currently installed single bore risers, neither the proposed nor the final rule prohibits their continued use. Operators may continue to use single bore production risers that are currently installed, although when work is performed through a single bore production riser, it causes wear on the riser, compromising its integrity. Thus, additional precautions for wear protection, wear measurement, fatigue analysis, and pressure testing prior to performing any well work with the tree removed are necessary for currently installed single bore risers. This is consistent with established BSEE policy and past approvals for well operations using currently installed single bore production risers. It is possible to do this work safely if the existing riser is in good shape, but there is no room for error or failures, since a single bore riser has only a single mechanical barrier and the consequences of failure of a single bore riser with open perforations could be serious; that is why BSEE has long required in permitting decisions, and is now codifying the requirement, that operators use dual barrier production risers for new installations.

Regarding the implementation date for the prohibition of single bore risers, BSEE agrees with the commenter that making the prohibition effective in 1 year was not appropriate under the circumstances; thus, BSEE has changed the effective date of this provision in the final rule to be the same as the effective date of the rule. If there is a question about what a single bore production riser is and how this provision applies to a specific situation, the operator may contact the appropriate District Manager.

Further, as suggested by some commenters, BSEE has added new paragraphs (e) and (f) to the final rule to point out that operators may seek approval to use alternate equipment or procedures in lieu of, or request departures from, the requirements of subpart H in accordance with existing §§ 250.141 and 250.142, respectively. Several provisions of the proposed rule included similar language; however, since the alternate compliance and departure provisions apply to all sections of part 250, it is not necessary to cite them expressly throughout the final rule. By including a single reference to §§ 250.141 and 250.142 in final § 250.800, BSEE confirms that those provisions are applicable to all subpart H requirements.

Hazard Analysis For FPSs

Comment—Commenters raised an issue related to proposed paragraph (c), requiring that all new FPSs comply with API RP 14J. Commenters stated that API RP 14J is a guidance document that identifies multiple tools for conducting a hazards analysis on offshore facilities, but noted that the proposed rule did not specify which tool(s) the operator must use to meet BSEE's expectations. Commenters also asserted that operators are already required to conduct a hazards analysis using one of the tools identified in API RP 14J or another recognized document in accordance with subpart S of BSEE's regulations, (*i.e.*, the SEMS regulations). Commenters recommended that BSEE first establish design and construction criteria for new units and then adjust the regulatory language to reflect the multiple tools in API RP 14J. Commenters recommended that BSEE either delete the API RP 14J requirement from this subpart, or revise the language to require operators to conduct a hazards analysis utilizing any one of the methodologies identified in API RP 14J.

Response—BSEE disagrees with the suggested changes to this section. API RP 14J, incorporated in final § 250.800(c) (for FPSs), was already incorporated by reference in former § 250.800(b) for the same types of facilities. Therefore, operators should already be complying with the relevant requirements, and this comment actually suggests eliminating existing regulatory requirements rather than modifying the proposed requirements. The existing and proposed (and now final) requirements are consistent with and complementary to those in the existing subpart S regulations. The operator may use any hazards analysis that satisfies subpart H to meet the requirements under existing § 250.1911 of subpart S; however, final § 250.800(c) will ensure that operators use an appropriate hazards analysis method selected in accordance with the relevant hazards analysis provisions of API RP 14J.[19]

Safety and Pollution Prevention Equipment (SPPE) Certification (§ 250.801)

Section summary—This section of the final rule contains requirements that were contained in § 250.806 of the existing regulations, requiring the installation of certified SPPE on OCS wells or as part of the system associated with the wells. The final rule, as proposed, also contains provisions to clarify that SPPE includes SSVs and actuators, such as those installed on injection wells capable of natural flow as well as BSDVs beginning 1year after the publication date of the final rule. (The installation and use of BSDVs was previously addressed in NTL No. 2009–G36, which clarified that BSDVs have the same function as SSVs and that BSDVs are the most critical component of a subsea system; thus, BSDVs that received approval and were installed in accordance with that NTL should already be in compliance with the requirements in the final rule.)

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[18] BSEE also finalized a similar provision as part of the Blowout Preventer Systems and Well Control Final Rule, effective July 28, 2016. (81 FR 25888 (April 29, 2016.)

[19] API RP 14J, section 7.1 states: "[t]he following sections describe the principal elements of hazards analysis and the various methods available, discuss review procedures to be followed, and outline the guidelines for selection of an appropriate method."

This section of the final rule also specifies that BSEE will not allow subsurface-controlled SSSVs on subsea wells and omits the reference to the ANSI/ASME standards found in existing § 250.806 because those standards are outmoded or have been withdrawn. The final rule also provides that SPPE equipment that is manufactured and marked pursuant to API Spec. Q1 will be considered certified SPPE under part 250. Although SPPE that is not manufactured or stamped pursuant to API Spec. Q1 is presumptively non-certified, final § 250.801(c) provides that BSEE may exercise its discretion to accept SPPE manufactured under quality assurance programs other than API Spec. Q1, provided that an operator submits a request to BSEE containing relevant information about the alternative program, that an appropriately qualified third-party verifies the alternative program as equivalent to API Spec. Q1, and that BSEE approves the request. In addition, final paragraph (c) authorizes an operator to request that BSEE accept SPPE that is marked with a third-party certification mark (other than an API monogram).

Regulatory text changes from the proposed rule—In the final rule, BSEE revised proposed paragraph (a)(2) to include BSDV "and their actuators." This is consistent with the requirements for other SPPE and acknowledges that the actuator is an integral part of the valve. BSEE further revised that paragraph to clarify that, for subsea wells, a BSDV is the equivalent of an SSV on a surface well. BSEE also revised proposed paragraph (c) to provide that any requested alternative quality management system must be verified as equivalent by an appropriately qualified entity.

Comments and responses—BSEE received public comments on this section and responds to them as follows:

Quality Assurance Programs

Comment—Commenters expressed concern that proposed § 250.801 would only recognize the quality assurance program in API Spec. Q1 for certified SPPE. Those commenters suggested broadening the coverage of the rule to include International Organization for Standardization (ISO) 9001, "Quality Management Standards—Requirements") (2015). Another commenter recommended that the equipment be marked by the manufacturer with the API Monogram as proof of conformance with the proposed requirement.

Response—BSEE evaluated this recommendation and has determined that the proposed quality assurance program requirements under paragraphs (a) and (b) are appropriate and provide sufficient flexibility. Nonetheless, BSEE has revised final § 250.801(c) to clarify that an operator may submit a request to BSEE to accept SPPE manufactured under another quality assurance program as compliant with paragraph (a), provided that an appropriately qualified entity (such as one that meets the criteria of ISO 17021–3, "Conformity assessment—Requirements for bodies providing audit and certification of management systems—Part 3: Competence requirements for auditing and certification of quality management systems," or similar criteria) verifies that the other quality assurance program is equivalent to API Spec. Q1. In addition, although BSEE has decided that a monogram requirement is not necessary, since this provision helps ensure the quality of the SPPE during the manufacturing process, BSEE will consider the marking of SPPE with the API monogram or a similar third-party certification mark, as alternative evidence of conformance with this section.

Definition of BSDV

Comment—One commenter requested clarification of the definition of a BSDV. Another commenter requested that BSEE clarify that only those valves associated with subsea systems qualify as BSDVs.

Response—According to the Barrier Concept (as discussed in BSEE NTL No. 2009–G36), for subsea wells, the BSDV is the surface equivalent of an SSV on a surface well. BSEE has added text to § 250.801(a)(2) in the final rule to clarify this point. Thus, the function of the BSDV is similar to the function of the SSV, and since the BSDV is a critical component of the subsea system, it is appropriate for BSDVs to be subject to the same requirements as SSVs under § 250.801. This also ensures the appropriate level of safety for the production facility. Final § 250.835 states that BSDVs are associated with subsea systems; this point is also emphasized by the revised text in final § 250.801(a)(2).

Certification of SPPE

Comment—Commenters requested clarification as to whether BSEE will deem existing SPPE acceptable, despite new certification requirements, until such equipment can be replaced. A commenter also requested clarification of the estimated impact on the cost and supply of SPPE equipment once ANSI/ASME SPPE–1–1994, "Quality Assurance and Certification of Safety and Pollution Prevention Equipment Used in Offshore Oil and Gas Operations," is no longer acceptable as an SPPE certification program.

Response—Section 250.806 of the existing regulations contained requirements similar to those in proposed § 250.802(d) regarding the use and installation of certified SPPE. Specifically, existing § 250.806 required use of certified SPPE if that SPPE was installed on or after April 1, 1998. However, existing § 250.806 also provided that non-certified SPPE in use as of that date could continue in service unless and until that equipment needed offsite repair, remanufacture or hot work (such as welding). Similarly, final § 250.802(d), as proposed, confirms that operators may continue to use any existing non-certified SPPE already in service unless and until it needs offsite repair, remanufacture or hot work. In addition, since final § 250.801 includes BSDVs as SPPEs (beginning September 7, 2017), the final rule provides that operators have until that date to come into compliance with the certification requirements for any new BSDVs; moreover, under final § 250.802(d), currently installed non-certified BSDVs may remain in service unless and until they require offsite repair, remanufacture or hot work.

The commenter's question about the cost and supply impacts that could occur once ANSI/ASME SPPE–1 was no longer recognized is already moot. That standard was withdrawn by industry in favor of API Spec. Q1 in 2013. Thus, the final rule should not adversely affect SPPE costs or supplies because industry has already evolved in keeping with the change in industry standards from ANSI/ASME SPPE–1 to API Spec. Q1.

Certified vs. Non-Certified SPPE

Comment—One commenter asserted that a report referred to in the proposed rule[20] demonstrates that a certified valve does not perform any better than a non-certified valve, and that BSEE has not demonstrated, through statistics and failure data, justification for the certification requirement. The commenter asserted that the requirement for use of only "certified" SPPE is not supported by the referenced report and will not provide any greater degree of safety or dependability. The commenter supported BSEE's efforts to work with industry to increase reliability of BSDVs and to promote the use of API standards, but noted that the agency does not recognize API Spec. 6D, "Specification for Pipeline Valves," or ANSI standards used in this service.

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[20] The proposed rule cited a 1999 Southwest Research Institute report, "Allowable Leakage Rates and Reliability of Safety and Pollution Prevention Equipment" (Project # 272), funded by MMS in connection with proposed safety system testing. (*See* 78 FR 52250.) That report is available at *https://www.bsee.gov/research-record/tap-272-allowable-leakage-rates-safety-and-pollution-prevention-equipment.*

Response—BSEE disagrees with the suggestion that certification provides no additional assurance that critical safety equipment will perform as designed. The referenced report was not the only factor considered when developing the proposed SPPE certification requirements. The existing regulations have required use of certified SPPE since April 1, 1998. In developing the new proposed and final certification requirements, BSEE considered the effectiveness of this longstanding requirement, as well as the existence of industry standards (such as ANSI/ASME SSPE–1 and API Spec. Q1) that support the requirement for certification to ensure the quality and effectiveness of this equipment. The only substantive addition to the final rule regarding SPPE certification requirements is that BSDVs will be considered SPPE that must be certified and otherwise conform to final § 250.801. As stated elsewhere, BSEE considers the BSDV on subsea wells to be the equivalent of an SSV on a surface well and it is appropriate to include BSDVs as SPPE under § 250.801.

Moreover, under § 250.804(a)(5) of the existing regulations, USVs were required to meet a zero leakage requirement and to be replaced or repaired if they failed to do so. However, since BSDVs will need to be certified (when required) under final §§ 250.801(a)(2) and 250.802(d), and to meet the zero leakage requirement under final § 250.880(c)(4)(iii), USVs used in connection with BSDVs will no longer be required to do so.

In any event, operators may continue to use existing non-certified SPPE already in service until it requires offsite repair, re-manufacturing, or hot work, at which time the operator must replace the non-certified SPPE with SPPE that conforms to the requirements of final § 250.801.

Regarding the comment on certain standards that were not referenced in the proposed rule, BSEE continually works to review various standards for possible incorporation, including those from API, ANSI, and other standards development organizations. The standards referred to in this comment may be considered in future rulemakings. However, the fact that BSEE does not incorporate by reference a particular standard does not preclude an operator from voluntarily complying with that standard. BSEE presumes that industry follows its own standards, regardless of whether BSEE incorporates them in the regulations.

Expand SPPE Certification Requirements

Comment—A commenter suggested that the proposed SPPE certification requirements be expanded to include all SPPE used for any production systems on the OCS where flammable petroleum gas or volatile liquids are produced, processed, compressed, stored, or transferred, and not be limited to the four types of valves listed in § 250.801(a).

Response—BSEE does not agree that the suggested expansion of the certification requirement is appropriate at this time. The particular SPPE identified in this section is specifically used for controlling the flow of fluids from the wellbore. The other equipment mentioned by the commenter is for processing the fluids, and that equipment has separate design, installation, and maintenance requirements under other subparts of part 250 (*e.g.*, subpart J).

Approval of SPPE not Certified Under API Spec. Q1

Comment—A commenter requested further information regarding the expected duration of BSEE review for SPPE equipment approval based on alternate quality assurance programs; the process by which BSEE will approve SPPE; and whether recertification will be required on a periodic basis.

Response—The time required for BSEE to evaluate SPPE manufactured under other quality assurance programs depends on the type and quality of the information submitted. Under final § 250.801(c), only SPPE manufactured under quality assurance programs other than ANSI/API Spec. Q1 would require approval from BSEE. BSEE will handle each evaluation on a case-by-case basis, but because this is expected to happen infrequently, this process will not create serious delays in approval of such equipment. Recertification of SPPE is not required; however, final § 250.802(b) incorporates standards that require for regular testing of SPPE, and final § 250.802(d) contains provisions addressing when the operator must replace existing equipment with certified SPPE.

Requirements for SPPE. (§ 250.802)

Section summary—The final rule recodifies many of the provisions in existing § 250.806(a)(3) as new § 250.802(a) and (b). Those provisions establish requirements for the valves defined as SPPE in final § 250.801, including requiring that all SSVs, BSDVs, USVs, SSSVs, and their actuators meet the specifications in certain API standards incorporated by reference in the final rule.

Final § 250.802(c) includes a summary of some of the requirements contained in the documents that are incorporated by reference in order to provide examples of those types of requirements. These requirements cover a range of activities affecting the SPPE over the entire lifecycle of the equipment and are intended to increase the reliability of the equipment through a lifecycle approach.

Final § 250.802(c)(1) also requires that each device be designed to function and to close in the most extreme conditions to which it may be exposed; this includes extreme temperature, pressure, flow rates, and environmental conditions. Under the final rule, the operator must have a qualified independent third-party review and certify that each device will function as designed under the conditions to which it may be exposed. Final § 250.802(c) also describes particular SPPE specifications and testing requirements.

BSEE has included a table in final § 250.802(d) to clarify when operators must install SPPE equipment that conforms to the requirements of § 250.801. Under the final rule, non-certified SPPE already in service can remain in service until the equipment requires offsite repair, re-manufacturing, or any hot work, in which case it must be replaced with SPPE that conforms to the requirements of § 250.801.

Final § 250.802(e) requires operators to retain all documentation related to the manufacture, installation, testing, repair, redress, and performance of SPPE until 1 year after the date of decommissioning of the equipment.

Regulatory text changes from the proposed rule—BSEE added actuators to the provisions in this section regarding SSVs, BSDVs, USVs, and SSSVs in order to be consistent with § 250.801 and to emphasize that the actuators are an integral part of the valves; therefore, the same requirements will apply to both the valves and the actuators. BSEE also slightly revised the language in the table in final § 250.802(d) to further clarify the circumstances under which certified SPPE must be used.

Comments and responses—BSEE received public comments on this section and responds to the comments as follows:

Definition of Lifecycle Approach

Comment—Commenters requested clarification of the meaning of "lifecycle approach."

Response—Although this term is not used in the regulatory text, the lifecycle approach involves vigilance throughout the entire lifespan of the SPPE, including design, manufacture, operational use, maintenance, and eventual decommissioning of the equipment. This approach considers "cradle-to-grave" issues for SPPE and is a tool to evaluate the operational use, maintenance, and repair of SPPE over its lifetime. Addressing the full lifecycle of critical equipment is essential to increasing the overall level of confidence that this equipment will perform as intended in emergency situations. As discussed earlier in part II.B, this concept is currently reflected in several industry standards for SPPE (*e.g.*, API Spec. 6A), and incorporating that concept in the final rule will ensure that it is more consistently followed by operators.

A major component of the lifecycle approach involves the proper documentation of the entire process, from manufacture through the end of the operational limits of the SPPE, which allows for continual improvement throughout the life of the equipment by evaluating mechanical integrity and improving communication between equipment operators and manufacturers.

Requirements for Valves

Comment—A commenter stated that it is dangerous to open a large diameter valve with full differential pressure across the valve's gate and, thus, revisions should be made to the proposed language to allow an arrangement where a smaller valve, at full differential pressure, first opens to reduce the pressure across the larger valve.

Response—BSEE does not agree that the suggested revision is necessary. BSEE does not expect the operator to open a large diameter valve with full differential pressure across the gate. Nothing in this section prohibits use of smaller diameter actuated valves in equalization lines, assuming that the smaller actuated valves can be isolated with a manual valve. This section provides the basic requirements for the functioning of the device, meaning that it has to close under the most extreme conditions to which it may be exposed, but does not specify precisely how that must be done.

Definition of Traceability

Comment—A commenter requested clarification on the meaning of the "traceability" requirement in proposed paragraph (c)(5).

Response—Section 250.802(c)(5) requires operators to comply with and document all manufacturing, traceability, quality control, and inspection requirements for SPPE subject to subpart H, including the standards incorporated by reference in the regulations. Traceability refers to the ability to document the installation, maintenance, inspection and other significant events during the "lifecycle" of the particular piece of equipment as they relate to the equipment's proper functioning. This includes, for example, documenting the marking of the equipment received from the manufacturer, so the operator can accurately track each piece of SPPE during its useful life. The standards incorporated by reference in final § 250.802(a) and (b) contain specific provisions on traceability.

Use of Independent Third-Parties

Comment—A commenter suggested that independent third-parties may not have the expertise required to conduct the lifecycle analysis on SPPE that was called for in § 250.802(c)(1) of the proposed rule. That commenter also suggested that limiting third-party certifiers to API-approved independent third parties would limit the pool of expertise, which would delay certification. Another commenter requested clarification as to the criteria for establishing whether a third-party reviewer has sufficient expertise and experience to perform the review and certification. That commenter also asked whether third-party reviewers will require periodic reevaluation.

Response—Final § 250.802(c)(1), as proposed, requires the independent third-party to have sufficient expertise and experience to perform the SPPE review and certification. Contrary to one commenter's assumption, however, § 250.802(c)(1) does not limit the pool to API-approved independent third parties.[21] Rather, that section makes operators responsible for ensuring that the third-party reviewers possess the appropriate experience and expertise. Operators currently have extensive experience in the use of independent third-party reviewers to comply with a number of existing regulatory requirements, and operators can use that experience to ensure that a third-party has the qualifications to perform its duties under § 250.802(c)(1). Based on BSEE's experience monitoring compliance with existing third-party requirements, BSEE believes that there is already a sufficient pool of qualified independent third-party reviewers for operators to choose from. Although BSEE does not need to approve third-party reviewers under this section, BSEE may consider the qualifications of independent third-party reviewers, on a case-by-case basis as the final rule is implemented and may, if appropriate, provide additional guidance in the future regarding third-party reviewer experience and expertise.

Finally, § 250.802(c)(1) does not require periodic revaluation of third-party reviewers; however, the operator will be responsible for ensuring that any third-party it employs possesses "sufficient expertise and experience" under § 250.802(c)(1) whenever the third-party performs the reviews and certifications required by this section.

Verifying Lifecycle Analysis

Comment—A commenter asserted that it is unclear from the proposed language how BSEE would verify lifecycle analysis without imposing an unwieldy document review process. The commenter suggested that third-party certification is one way to conduct such verification and to ensure compliance with the rule without BSEE reviewing all of the documentation.

Response—BSEE disagrees with the commenter's premise. Section 250.802 of the final rule does not require that documents related to the lifecycle approach be submitted to or reviewed by BSEE. Paragraph (e) of that section requires only that all documents related to the manufacture, installation, testing, repair, redress, and performance of SPPE be retained until one year after the equipment is decommissioned. If BSEE identifies a need to review any specific documentation to verify that the lifecycle approach is being followed in a particular case, it can request that documentation.

Use of Existing Non-Certified SPPE

Comment—A commenter noted that the proposed rule would allow non-certified SPPE to remain in service. The commenter suggested that non-certified SPPE should be replaced over a specified period of time and eventually eliminated completely at offshore facilities.

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[21] The commenter may have confused the requirement in proposed paragraph (c)(3) that SPPE valves be tested by "API-licensed test agencies" with the third-party certification requirement in paragraph (c)(1). There is no such limitation in paragraph (c)(1) regarding third-party reviewers. Information from the tests performed by a licensed testing agency under paragraph (c)(3) may, of course, be used by an independent third party in reviewing and certifying SPPE under paragraph (c)(1), although additional documentation may also be necessary.

Response—BSEE does not believe that the commenter's suggested requirement is necessary. The regulation (existing § 250.806(b)(2)) that is being revised and replaced by final § 250.802(d) already required, as of April 1, 1998, that operators replace non-certified SPPE that needed offsite repair, re-manufacturing, or any hot work with certified SPPE. Thus, most existing SPPE is already certified under the existing regulation; this final rule essentially adds BSDVs and their actuators to that certification requirement (beginning September 7, 2017). Moreover, final § 250.802(d) also requires any remaining non-certified SPPE that needs offsite repair, remanufacturing or hot work to be replaced with certified SPPE. In addition, all SPPE must meet specific testing requirements pursuant to final § 250.880. Any existing, non-certified SPPE that fails such tests and that is in need of offsite repairs, remanufacturing, or hot work, must be replaced with certified SPPE pursuant to final § 250.802(d). Existing § 250.806(b)(2) also permitted installation, prior to April 1, 1998, and use of non-certified SPPE only if it was in the operator's inventory as of April 1, 1988, and was included in a list of noncertified SPPE submitted to BSEE prior to August 29, 1988. Thus, BSEE expects that non-certified SPPE will be replaced by certified SPPE over time without the need for the additional requirements suggested by the commenter.

Purpose of SPPE Requirements for BSDVs

Comment—A commenter suggested that the proposed language of § 250.802(a) and (c) was inaccurate, internally inconsistent, and not in agreement with the overall intent of the proposed rule. Specifically, the commenter stated that, although BSDVs are included in paragraph (a), BSDVs are not specifically addressed in the referenced standards, and the rule should instead include a reference to API RP 14H for BSDVs. The commenter also asserted that the intent of the independent third-party language in proposed paragraph (c)(1) was to require no more than a simple certification and marking with the API monogram by the manufacturer, and that requiring an independent third-party to certify functionality of every individual item of equipment would not be achievable.

Response—BSEE does not agree with the commenter's implied assertion that the inclusion of BSDVs in paragraph (a) is inconsistent with the language of that paragraph incorporating API Spec. 6AV1 and API/ANSI Spec. 6A. Although those standards do not expressly refer to BSDVs, their specifications apply to surface valves, which is a term broad enough to encompass BSDVs. In any event, if there is any conflict between any document incorporated by reference and the regulations, the regulations control; thus, the asserted intent of the developer of the standard does not constrain the terms of BSEE's regulations.

Nor does BSEE agree that this section should reference API RP 14H for BSDVs, given that final § 250.836 requires all new BSDVs and BSDVs that are removed from service for remanufacturing or repair to be installed, inspected, maintained, repaired, and tested in accordance with API RP 14H's requirements for SSVs. That standard is also referenced in § 250.880(c)(4)(iii), which requires operators to test BSDVs according to API RP 14H's requirements for SSVs.

BSEE also does not agree with the commenter's concerns regarding the independent third-party requirement in final § 250.802(c)(1). The independent third-party does not guarantee permanent functionality of the SPPE, as implied by the commenter, but certifies that—at the time of certification—the equipment will function as designed under the conditions to which it may be exposed.

Comment—Several commenters requested clarification on the requirement for independent third-party review and certification of SPPE equipment design under proposed § 250.802(c)(1). Specifically, commenters asked whether BSEE will require approval of the use of a particular certified verification agent (CVA), and whether BSEE will accept wholesale certification by a single supplier of all equipment provided by that supplier.

One commenter also requested clarification as to whether requalification testing performed following equipment design changes will be required, and whether requalification testing will apply only to the manufacturer that makes the design changes.

One commenter recommended that, if BSEE keeps the certification requirement in the final rule, then BSEE should extend the 1-year timeframe in § 250.801(a)(2) before BSDVs are considered to be SPPE to 2 years, thereby extending the compliance date for use of certified BSDVs to 2 years after publication of the final rule. Commenters also expressed concern about the costs of replacing, repairing, or remanufacturing existing (non-certified) SPPE and maintaining documentation for SPPE equipment. In particular, commenters asserted that, where no isolation valve exists, installation or replacement of a safety valve would require excessive shutdown time and construction work on lines that have previously contained hydrocarbons. They also suggested that this result would greatly increase the risk of a serious incident from arbitrarily replacing a non-certified valve that cannot be shown to be inferior to a certified valve.

Response—With regard to the comment on CVAs, BSEE does not intend at this time to limit the pool of independent third-party reviewers by approving or requiring particular certification agents. As stated in an earlier response, if warranted, BSEE can review the qualifications of any independent third-party reviewer and may provide additional guidance in the future, if appropriate, regarding third-party certifiers' experience, expertise and independence.

With regard to requalification testing of SPPE, proposed and final § 250.802(c)(4) expressly state that, if there are manufacturer design changes to a specific piece of equipment, requalification testing is required. With regard to whether the proposed requalification testing requirement applies only to the manufacturer that makes a design change, the answer is "no." When read in conjunction with final § 250.802(c)(3), paragraph (c)(4) requires that requalification testing be performed by an API-licensed test agency. Final paragraph (c)(4) specifies, as proposed, that the operator (*i.e.,* "you"), not the manufacturer, is responsible for having requalification testing performed.

BSEE disagrees with the request to extend the timeframe for BSDVs to meet the SPPE requirements, including the certification requirement. The 1-year timeframe for BSDVs to be considered SPPE is sufficient, especially since paragraph (d)(3) of this section provides that non-certified SPPE (which will include BSDVs 1 year after publication of the final rule) that is already in service need not be replaced with certified SPPE until it requires offsite repair, re-manufacturing, or any hot work.

Most Extreme Conditions

Comment—A commenter requested clarification as to the meaning of "most extreme conditions" to which each SPPE device may be exposed and who has the authority to define the term. The commenter recommended that the operator should be responsible for establishing what "most extreme credible conditions" means, but that the operator's assumptions should also be subject to validation by the independent third party. The commenter also requested clarification as to how independent third parties should be selected and the timing and triggering requirements for SPPE device certifications.

Response—The operator is responsible for determination and application of the specific wellbore conditions. As with other aspects of operations, the operator is responsible for making reasonable assumptions and must document and explain those assumptions through the application process. An operator is not responsible for ensuring that SPPE is designed to function at conditions that are not reasonably anticipated during production operations. Conversely, an operator is responsible for ensuring that its proposed SPPE is designed to function properly in the conditions that a qualified and prudent OCS operator should reasonably expect to encounter during the production operation.

For the independent third-party, BSEE will not approve or select appropriate parties. However, BSEE may review the qualifications and expertise of an independent third-party if there is an issue concerning an independent third-party's certifications. Operators must have SPPE certified on a per well basis, because each well will have different operating and environmental conditions.

Costs

Comment—BSEE received multiple comments on the costs associated with industry standards incorporated by reference, and notations that the economic analysis fails to identify those costs. These comments included questions on the economic analysis baseline; whether the economic analysis accurately portrays the 1988 final rule and agency regulations; discussion of the costs of new requirements in API 570 for piping system inspection; and the allegation that the agency did not include or analyze the costs associated with proposed §§ 250.800(b), 250.802(b), and 250.841(b).

Response—BSEE included the costs associated with following industry standards as part of the baseline of the economic analysis. Per OMB Circular A–4, which provides guidance to Federal agencies on the preparation of the economic analysis, the baseline represents the agency's best assessment of what the world would be like absent the action. The 1988 final rule is the starting point, and that rule contained a majority of the provisions that are currently found in the regulations.

The baseline should include all practices that reflect existing industry standards and regulations, and that would continue to do so even if the new regulations were never imposed. Industry standards represent generally accepted practices and expectations that are used by the offshore oil and gas industry in their day to day operations. Such standards are industry-developed documents that are written and utilized by industry experts. Thus, even without regulations requiring compliance with the standards, we understand and expect that industry follows these standards to ensure safety and reliability of operations. Therefore, BSEE includes the benefits and costs of utilizing these standards (including API 570) in the economic baseline. This is consistent not only with the guidance provided by OMB Circular A–4, but also with commonly accepted methods within the economic profession and BSEE's approach in previous rulemakings.

The existing subpart H regulations already require compliance with API RP 14J for all new FPSs. Accordingly, costs associated with such compliance are not attributable to this rule. In addition, compliance with API RP 14J is already required in subpart I (§ 250.901(a)(14)) for all platforms. Subpart S also requires hazard analysis under § 250.1911. Although API RP 14J is not specified in § 250.1911, it is an appropriate document to use for compliance with that section in the context of production safety systems. The requirement for hazard analysis is not new; BSEE is only specifying which document to use for certain situations. By following API RP 14J, as incorporated in subpart H, the operator is also complying with the hazard analysis requirement in subpart S (the SEMS regulations) for the relevant systems.

Final § 250.802(b) is based on industry standards (ANSI/API Spec. 14A, *Specification for Subsurface Safety Valve Equipment* and ANSI/API RP 14B, *Recommended Practice for Design, Installation, and Operation of Subsurface Safety Valve Systems*). API RP 14C and RP 14E are already incorporated in the existing BSEE subpart H regulations and are not new requirements.

What SPPE Failure Reporting Procedures Must I Follow? (§ 250.803)

Section summary—Final § 250.803 establishes SPPE failure reporting procedures. Section 250.803(a) requires operators to follow the failure reporting requirements contained in section 10.20.7.4 of API Spec. 6A for SSVs, BSDVs, and USVs, and to follow the requirements in section 7.10 of API Spec. 14A and Annex F of API RP 14B for SSSVs. It requires operators to provide a written notice of equipment failure to BSEE and the manufacturer of such equipment within 30 days after the discovery and identification of the failure. The final rule defines a failure as, "any condition that prevents the equipment from meeting the functional specification." This is intended to ensure that design defects are identified and corrected and that equipment is replaced before it fails.

Final § 250.803(b) requires operators to ensure that an investigation and a failure analysis are performed within 120 days of the failure to determine the cause of the failure and that the results and any corrective action are documented. If the investigation and analysis is performed by an entity other than the manufacturer, the final rule requires operators to ensure that the manufacturer and BSEE receive copies of the analysis report.

Final § 250.803(c) specifies that if an equipment manufacturer notifies an operator that it changed the design of the equipment that failed, or if the operator changes operating or repair procedures as a result of a failure, then the operator must, within 30 days of such changes, report the design change or modified procedures in writing to the Chief of BSEE's Office of Offshore Regulatory Programs or the Chief's designee.

Final § 250.803(d) provides the address to which reports required by this section to be submitted to BSEE must be sent.

Regulatory text changes from the proposed rule—BSEE updated paragraph (a) by changing the required written documentation of equipment failure from a "report" to a "notice," and adding BSEE as a recipient. In paragraph (b), BSEE increased the timeframe for investigation and failure analysis to 120 days and added a requirement to submit the analysis report to BSEE. The address for BSEE in proposed paragraph (c) for submission of reports to BSEE was moved to new paragraph (d) in the final rule, which also updates the address to reflect BSEE's current location in Sterling, VA. These changes were in response to comments received and will help ensure that BSEE is aware of equipment failures and corresponding investigations and failure analysis.

Comments and responses—BSEE received public comments on this section and responded to the comments as follows:

Timing of Failure Reporting

Comment—One commenter recommended the submission of all failure reporting data to BSEE within 30 days, and that international failures should be included in the analysis. Another commenter suggested that SPPE failure reports be submitted to a third-party organization for review and analysis so that the third party could analyze the information in the failure reports and provide BSEE, operators and manufacturers with assimilated data that would help develop and improve SPPE reliability and SPPE operating best practices.

Response—BSEE agrees with several of the issues raised by these comments and has revised this section in the final rule to require that the written notice of equipment failure, a copy of the analysis report, and a report of design changes or modified procedures be submitted to BSEE as well as to the manufacturer. Specifically, the notice of failure and report of design changes or modified procedures must be provided to the Chief of BSEE's Office of Offshore Regulatory Programs, or to the Chief's designee, and to the equipment manufacturer within 30 days. However, BSEE does not agree that 30 days is a realistic timeframe for the completion of a thorough and meaningful investigation and failure analysis report. Once failure reporting is sufficiently established, BSEE may consider additional reporting requirements. BSEE does not require failure reporting from areas outside the U.S. OCS. BSEE may consider information that is available from operations in other countries, but since would be extremely difficult to ensure consistent reporting of information, at this time, it is unlikely that BSEE would consider it appropriate to consider such information in a formal analysis. In addition, as suggested by a commenter, BSEE may consider designating an appropriate third-party to receive the failure notifications and operators' investigation/analysis reports so that the third-party could analyze the information and provide aggregated data and statistical analyses to industry, BSEE, and the public.

Comment—Commenters suggested that the proposed 60-day timeframe for investigation and failure analysis could be difficult for some manufacturers to meet given their workload. They suggested that there should be some leeway for instances where failure analyses have been requested or are in process, but will not be completed before the 60-day deadline. The commenters also expressed concern that failure or design change reporting may lead BSEE to require all operators to replace a particular model of equipment based on isolated failures of the equipment.

Response—The comment regarding possible difficulties with equipment manufacturers meeting the proposed deadline for failure investigation and analysis is misplaced; the operator is responsible for ensuring the investigation and failure analyses are performed, not the manufacturer. However, BSEE has increased the timeframe to perform the investigation and failure analysis in the final rule to 120 days to accommodate concerns regarding the operator's ability to meet the shorter proposed timeframe. When BSEE receives notification of a design change from the operator, BSEE will work with the operator on a case-by-case basis to ensure that the appropriate actions are taken, including an assessment of whether any equipment changes are warranted by the reported failure(s).

Manufacturers and Failure Reporting

Comment—One commenter stated that the requirement for failure reporting to and from SPPE manufacturers fails to address the reality that a manufacturer may go out of business or be acquired by another firm. The commenter asked what failure reporting procedures must be followed in the event an SPPE manufacturer is no longer in business or is acquired by a different company.

Response—The failure reporting requirements only apply to active businesses. If a manufacturer is no longer in business, the operator may contact BSEE and we will work with the operator on a case-by-case basis. If a business is the subject of a merger or is acquired by another entity, the operator should perform the necessary reporting with the successor company.

Additional Requirements for Subsurface Safety Valves (SSSVs) and Related Equipment Installed in High Pressure High Temperature (HPHT) Environments (§ 250.804)

Section summary—The final rule recodifies existing § 250.807 as final § 250.804. BSEE did not propose any significant revisions to the existing requirements. This section addresses requirements for SSSVs used in HPHT environments. Paragraph (a) specifies the information that the operator must submit to demonstrate that the SSSVs and related equipment can perform in the HPHT environment. Paragraph (b) defines the HPHT environment. Paragraph (c) describes the related equipment that must meet these requirements.

Regulatory text changes from the proposed rule—BSEE updated the section to correct minor formatting errors and changed the label on the pressure rating specified in paragraphs (b)(1) and (2) from pounds per square inch gauge (psig) to pounds per square inch absolute (psia), to be consistent with industry practices.

Comments and responses—BSEE did not receive any comments on this section.

Hydrogen Sulfide (§ 250.805)

Section summary—The final rule will move the requirements found at former § 250.808 to final § 250.805, and reword them for clarity. These provisions pertain to production operations in zones known to contain hydrogen sulfide (H_2S) or zones where the presence of H_2S is unknown. The final rule also adds a new section requiring that the operator receive approval through the DWOP process for production operations in HPHT environments containing H_2S, or in HPHT environments where the presence of H_2S is unknown.

Regulatory text changes from the proposed rule—BSEE did not make any significant changes to this section.

Comments and responses—BSEE received a public comment on this section; however, the comment did not include any relevant questions or suggested modifications to the rule.

Dry Tree Subsurface Safety Devices—General (§ 250.810)

Section summary—The final rule recodifies the provisions in existing § 250.801(a) as final § 250.810 in the context of dry tree subsurface safety devices (final § 250.825 accomplishes a similar recodification for wet trees) and restructures the section for clarity. This section establishes general requirements for subsurface safety devices used with dry trees. All tubing installations open to hydrocarbon-bearing zones must have safety devices that will shut off flow in an emergency situation. It includes a list of subsurface safety devices. The final rule also adds a requirement to install flow couplings above and below subsurface safety devices.

Regulatory text changes from the proposed rule—In response to comments, BSEE revised this section to remove the designation of flow couplings as a safety device, but still requires the installation of flow couplings above and below the subsurface safety device. Flow couplings prevent wear and reduce the effects of turbulence on SSSV performance and are considered to be an integral part of the tubing string. However, they must be installed, as provided for in API RP 14B, Recommended Practice for Design, Installation, Repair and Operation of Subsurface Safety Valve Systems, which is incorporated by reference in other provisions of this final rule (*e.g.*, §§ 250.802(b), 250.803(a), 250.814(d)) and existing BSEE regulations.

Comments and responses—BSEE received public comments on this section and responds to the comments as follows:

Fail-Safe Valves

Comment—A commenter suggested that BSEE should revise the rule language to clarify that surface-controlled SSSVs are fail-safe automatic valves, and these valves are installed at a fail-safe setting depth that allows for automatic closure under worst-case hydrostatic conditions.

Response—No changes are necessary. The regulations require operators to follow API RP 14B, Recommended Practice for Design, Installation, Repair and Operation of Subsurface Safety Valve Systems. This standard is incorporated in existing subpart H regulations, as well as in this final rule. The provisions of API RP 14B are consistent with the commenter's suggestions. In addition, there are specific requirements for SSSVs throughout subpart H and specific testing requirements under § 250.880.

Flow Couplings

Comment—A commenter suggested removing language referencing flow couplings from all sections requiring certification of subsurface safety devices as flow couplings are not safety devices. The commenter also recommended that BSEE incorporate by reference API Spec. 14L, Specification for Lock Mandrels and Landing Nipples.

Response—BSEE agrees with the commenter that flow couplings should not be considered a safety device. BSEE updated the section's introductory paragraph to clarify that flow couplings must be installed above and below the subsurface safety device and removed the reference to a flow coupling as part of the subsurface safety device. BSEE continually considers relevant standards for incorporation, but does not always decide to incorporate a specific standard into the regulations. In this case, the design of equipment that the document covers (lock mandrels and landing nipples) are addressed with tubing design in subparts E and F of the existing regulations. Flow couplings prevent wear and reduce the effects of turbulence on SSSV performance and are considered an integral part of the tubing string.

Specifications for SSSVs—Dry Trees (§ 250.811)

Section summary—The final rule recodifies former § 250.801(b) as § 250.811 with respect to SSSVs used with dry trees. It also updates the internal cross-references to the new provisions of subpart H. This section establishes general requirements for all SSSVs, safety valve locks, and landing nipples, requiring this equipment to conform to the requirements in final §§ 250.801 through 250.803.

Regulatory text changes from the proposed rule—BSEE revised this section by removing flow couplings from the equipment regulated as part of the SSSVs. These changes were made based on comments received to clarify that flow couplings are not considered SPPE. BSEE also removed the reference to approval of alternate procedures or equipment under § 250.141. That provision and its associated procedures are generally available with respect to operations under part 250, so it is unnecessary to specifically reference it here.

Comments and responses—BSEE received public comments on this section and responds to the comments as follows:

Flow Couplings

Comment—A commenter suggested that the language indicating that "flow couplings" must conform to the SPPE requirements should be revised. The commenter noted that there are no API or industry standards for flow couplings as they are not safety devices, but rather a manufacturer specific item of equipment. The commenter also stated that flow couplings are not identified as SPPE in proposed §§ 250.801 through 250.803 and recommended removal of the reference to flow couplings.

Response—BSEE agrees with the commenter that flow couplings should not be considered a safety device. However, they must be installed, as provided for in API RP 14B, Recommended Practice for Design, Installation, Repair and Operation of Subsurface Safety Valve Systems. This document is incorporated by reference in this rulemaking in final § 250.802(b) and existing BSEE regulations. Flow couplings prevent wear and reduce the effects of turbulence on SSSV performance and are considered an integral part of the tubing string. BSEE revised this section to remove the reference to flow couplings and suggestion that they are a safety device.

Surface-Controlled SSSVs—Dry Trees (§ 250.812)

Section summary—The final rule recodifies existing § 250.801(c) as final § 250.812 for purposes of establishing requirements for surface-controlled SSSVs when using dry trees. A change from current regulations will require operators to receive BSEE approval for locating the surface controls for SSSVs at a remote location. Operators must request and receive BSEE approval to locate surface controls at a remote location in accordance with § 250.141, regarding alternate procedures or equipment.

Regulatory text changes from the proposed rule—BSEE did not make any changes to this section.

Comments and responses—BSEE did not receive any comments on this section.

Subsurface-Controlled SSSVs (§ 250.813)

Section summary—The final rule recodifies the requirements of existing § 250.801(d)—regarding standards for obtaining approval of subsurface-controlled SSSVs—as final § 250.813. It rewrites the existing provision using plain language and removes one previously recognized basis for using subsurface-controlled SSSVs.

Regulatory text changes from the proposed rule—BSEE updated the section with minor formatting changes and replaced BSEE with District Manager to clarify where to direct a request for approval to equip a dry tree well with an SSSV that is controlled at the subsurface in lieu of an SSSV that is controlled at the surface.

Comments and responses—BSEE received public comments on this section and responds to the comments as follows:

Require Surface-Controlled SSSVs

Comment—A commenter recommended eliminating the portion of § 250.813 that allows operators to install a subsurface-controlled SSSV instead of pulling the well tubing and installing the preferred surface-controlled SSSV or, at a minimum, the commenter recommended revising the rule to set a time limit for installation of the preferred surface-controlled SSSV, rather than allowing the operator to produce the well indefinitely without making this change.

Response—No changes to the regulation are needed. Requiring installation of an SSSV that is surface-controlled within a specific timeframe may cause an increase in the number of wells that are prematurely abandoned, due to the costs involved with pulling and replacing tubing. This would raise concerns about conservation of resources. The rule requires installation of a surface-controlled SSSV if tubing is removed and reinstalled.

Design, Installation, and Operation of SSSVs—Dry Trees (§ 250.814)

Section summary—The final rule recodifies existing § 250.801(e) as § 250.814, perpetuating standards for the design, installation, and operation of SSSVs with dry trees. The final rule rewords the existing regulation for plain language and clarity. In final § 250.814(b), BSEE incorporated the definition of routine operations from the definitions section at § 250.601 and added a reference to § 250.601 for more examples of routine operations.

Regulatory text changes from the proposed rule—BSEE reversed the order of proposed paragraphs (b) and (c) for greater clarity as to how the requirements in those paragraphs complement each other. BSEE updated final paragraph (d) to include a reference to SSSV testing at § 250.880. This change was based on comments suggesting that BSEE clarify that those testing requirements apply to SSSVs. BSEE also removed the reference to §§ 250.141 and 250.142 from paragraph (a). Those provisions and their associated procedures are generally available with respect to operations under part 250, so it is unnecessary to specifically reference them here. The approval of alternate setting depth under final § 250.814(a) will be considered on a case-by-case basis.

Comments and responses—BSEE received public comments on this section and responds to the comments as follows:

SSSV Testing

Comment—A commenter recommended that BSEE revise this section to include: A semi-annual SSSV testing interval in the proposed requirement at § 250.880; a requirement that no leakage during valve testing be detected as evidenced by a stabilized, flat-line pressure response verifying that a well is completely shut-in and isolated; a requirement that an operator notify BSEE of valve testing such that it can send inspectors to observe testing; a requirement that the operator report valve failures to BSEE; and immediate shut-in of wells after a failed test or indication of a failed SSSV.

Response—The regulatory testing requirements for SSSVs under § 250.880, in addition to the testing provisions in API RP 14B, are adequate. SSSVs are part of a closed system contained within the tubing. This system is designed to minimize oil spills by stopping the flow within the tubing in the event that the riser is damaged. BSEE revised this section to reference SSSV testing requirements in § 250.880, clarifying that those testing requirements apply to SSSVs. BSEE conducts regular inspections of facilities. During the inspections, a full review of all testing and maintenance records is usually conducted. BSEE can require the operator to test the SSSV and BSEE may witness the testing during routine inspections, however this authority does not need to be specified in § 250.814.

Subsurface Safety Devices in Shut-In Wells—Dry Trees (§ 250.815)

Section summary—The final rule recodifies existing § 250.801(f) as § 250.815 for the context of dry trees, and rewrites it in plain language. This section provides operators with options on how to isolate a well, whether prior to initial production or after being shut-in for a period of 6 months. BSEE did not propose any substantive changes to the existing requirements for subsurface safety devices in shut-in wells using dry trees.

Regulatory text changes from the proposed rule—BSEE did not make any significant changes to this section in the final rule.

Comments and responses—BSEE received public comments on this section and responds to the comments as follows:

Alternate Setting Depths

Comment—A commenter recommended revising proposed §§ 250.814 and 250.815 to specify the alternate setting depth requirements for wells installed in permafrost areas, or wells subject to unstable bottom conditions, hydrate formation, or paraffin problems.

Response—Setting depth is based on site specific conditions. Specifying a single setting depth may not adequately ensure the integrity of the well under all applicable scenarios and environmental conditions. Final §§ 250.814(a) and 250.815(b) allow the District Manager to address the particular circumstances presented in setting depths for wells in areas of permafrost, unstable bottom conditions, hydrate formation, or paraffin problems.

Subsurface Safety Devices in Injection Wells—Dry Trees (§ 250.816)

Section summary—The final rule recodifies existing § 250.801(g) as final § 250.816, and rewrites it in plain language. This section requires operators to install a surface-controlled SSSV or an injection valve capable of preventing backflow in all injection wells, unless the District Manager determines that the injection well is incapable of natural flow. BSEE did not propose any substantive changes to the existing requirements for subsurface safety devices in injection on dry tree wells.

Regulatory text changes from the proposed rule—BSEE did not make any significant changes to this section in the final rule.

Comments and responses—BSEE did not receive any comments on this section.

Temporary Removal of Subsurface Safety Devices for Routine Operations (§ 250.817)

Section summary—The final rule recodifies existing § 250.801(h) as final § 250.817, with the title of the section changed for clarity and the text rewritten for plain language. It addresses how operators must ensure safety if they temporarily remove certain subsurface safety devices to conduct routine operations, *i.e.*, operations that do not require BSEE approval of a Form BSEE–0124, Application for Permit to Modify (APM). BSEE did not propose any substantive changes to the existing requirements for the temporary removal of subsurface safety devices for routine operations.

Regulatory text changes from the proposed rule—In final § 250.817(c), BSEE added the term "support vessel," as another option for attendance on a satellite structure.

Comments and responses—BSEE received public comments on this section and responds to the comments as follows:

Support Vessel

Comment—A commenter asserted that is not clear what purpose is served by the proposed requirement to have a support vessel in attendance if an SSSV is inoperable. The commenter suggested revising the language to remove the reference to support vessels.

Response—No changes are necessary. For a well on a satellite structure, the support vessel is intended to give personnel an escape route in the event of an emergency. If a support vessel is not on site and SSSV is removed, the operator must install a pump-through plug.

Additional Safety Equipment—Dry Trees (§ 250.818)

Section summary—The final rule recodifies existing § 250.801(i) as final § 250.818, addressing additional safety equipment to be used with dry trees. The final rule rewrites the existing provision for plain language, with no significant revisions.

Regulatory text changes from the proposed rule—BSEE did not make any significant changes to this section.

Comments and responses—BSEE did not receive any comments on this section.

Specification for Surface Safety Valves (SSVs) (§ 250.819)

Section summary—The final rule recodifies the portion of former § 250.802(c) related to wellhead SSVs and their actuators as final § 250.819. The final rule rewrites the provision for plain language and updates the cross-referenced provisions, but makes no substantive change. BSEE recodified the portion of existing § 250.802(c) related to USVs as § 250.833 in the final rule. This section requires all wellhead SSVs and their actuators to conform to the requirements specified in §§ 250.801 through 250.803.

Regulatory text changes from the proposed rule—BSEE did not make any significant changes to this section.

Comments and responses—BSEE received public comments on this section and responds to the comments as follows:

Valve Testing Requirements

Comment—A commenter recommended that BSEE include or incorporate by reference a separate section on valve testing requirements in this section. Existing regulations require SSVs for each well that uses a dry surface tree. The proposed regulations would require compliance with API RP 14H. API RP 14H provides for periodic valve testing at an unspecified frequency. The commenter supported the monthly testing requirement in § 250.880 for this valve and asserted that such a critical valve used to isolate a well in the event of abnormal well conditions or an emergency should not leak at all. Additionally, the commenter recommended requiring the operator to notify BSEE immediately if a valve fails or does not pass a test and to shut in the well until the valve is repaired or replaced.

Response—Section 250.819 in the final rule requires conformance with § 250.803, which addresses failure reporting to BSEE for SSVs. BSEE may request additional failure data if necessary. To clarify the testing requirements for SSVs, BSEE revised the final rule in § 250.820 to reference § 250.880. There is no need to repeat that reference here. The failure reporting requirements follow industry standards as required in final § 250.803. Under final § 250.880(c)(2)(iv), operators must test SSVs monthly and if any gas and/or liquid fluid flow is observed during the leakage test, the operator must immediately repair or replace the valve. API RP 14H allows for some leakage during this test, however, in the final rule, BSEE requires no gas and/or liquid flow during the leakage test. As previously stated, when there is a difference between the regulations and the incorporated standards, the operator must follow BSEE's regulations.

Use of SSVs (§ 250.820)

Section summary—The final rule recodifies the portion of existing § 250.802(d) related to the use of SSVs as § 250.820. The final rule rewrites the provision for plain language and clarity, but makes no substantive change. This section requires operators to follow API RP 14H for the installation, maintenance, inspection, repair, and testing of all SSVs and includes requirements if the SSV doesn't operate properly or if any gas and/or liquid fluid flow occurs during the leakage test. The portion of the existing § 250.802(d) related to USVs is recodified as final § 250.834.

Regulatory text changes from the proposed rule—BSEE updated the section by adding "gas and/or liquid" to clarify the reference to fluid flow observed during the leakage test, and by adding a specific reference to such testing "as described in § 250.880." BSEE added this citation to emphasize that there are specific SSV testing requirements in § 250.880.

Comments and responses—BSEE received public comments on this section and responds to the comments as follows:

Testing References

Comment—A commenter stated that the proposed rule did not refer to the testing requirements specified for SSVs as described in proposed § 250.880. The commenter recommended that a reference to § 250.880 should be included in § 250.820.

Response—BSEE revised this section to include the recommended reference to § 250.880.

Emergency Action and Safety System Shutdown—Dry Trees (§ 250.821)

Section summary—The final rule recodifies existing § 250.801(j) as § 250.821, addressing actions that must be taken in response to emergency situations. BSEE clarified the existing reference to storms as an example of an emergency by adding a reference to a National Weather Service-named tropical storm or hurricane because not all impending storms constitute emergencies. BSEE also added a requirement that operators shut-in oil wells and gas wells requiring compression in the event of an emergency. This final rule also incorporates the valve closure times for dry tree emergency shutdowns from existing § 250.803(b)(4)(ii), with an added reference to §§ 250.141 and 250.142 with respect to obtaining District Manager approval.

Regulatory text changes from the proposed rule—BSEE edited paragraph (a)(2) to clarify the requirements and to define a shut-in well. The content was not otherwise revised but was rearranged. BSEE also removed the reference to §§ 250.141 and 250.142 from paragraph (a)(2)(ii). Those provisions and their associated procedures are generally available with respect to operations under part 250, so it is unnecessary to reference them here. BSEE also removed the reference to the subsea field found in proposed paragraph (b).

Comments and responses—BSEE received public comments on this section and responds to the comments as follows:

Emergency

Comment—A commenter requested clarification as to what constitutes an "emergency" that will require oil wells and gas wells requiring compression to be shut-in.

Response—There a number of different types of emergencies that could necessitate the shut-in of production. The example provided in this section is a specific named storm, and shut-in will be associated with the anticipated storm path. Any number of other emergency circumstances may likewise preclude the safe continuation of production and require shut-in pursuant to this provision. If there are any questions or concerns about whether a particular circumstance requires shut-in, the operator may contact the appropriate District Manager for guidance.

Storm Timers

Comment—A commenter requested clarification that BSEE will not allow oil wells and gas wells requiring compression to flow on hurricane or storm timers, and that they must be shut-in before personnel evacuate.

Response—No changes are necessary based on this comment. The regulations set specific requirements for valve closure timing based on the actuation of an ESD or the detection of abnormal conditions. The regulation does not allow operators to use timers to delay the valve closure. In addition, operators must include emergency response and control in their SEMS program under § 250.1918; this should include evacuation and shut-in procedures.

Impending Named Tropical Storm or Hurricane

Comment—A commenter requested clarification as to the meaning of "impending named tropical storm or hurricane" and asks whether there will be some cases in which a storm or other meteorological event will not require shut-in.

Response—The description of an impending named tropical storm is one example of an emergency situation when BSEE would require operators to shut-in their wells. In this example, the need for shut-in will be determined by the anticipated storm path and whether it threatens to impact the relevant production operations. The determination as to whether to shut-in a specific facility during a storm event is based on a number of factors, including the proximity of the facility to the storm path, the anticipated wind strength and waves heights, and the design of the facility. The operator must address emergency response and control in its SEMS program, under § 250.1918; this should include the conditions for shut-in and evacuation.

Subsea Fields

Comment—A commenter noted that the language in this section is specific to dry tree SSVs, but also noted that the proposed text mentions "subsea fields." The commenter recommended deleting the reference to "subsea fields."

Response—BSEE agrees with the comment, and removed "or subsea field" from paragraph (b) in the final rule.

Subsea Tree Subsurface Safety Devices—General (§ 250.825)

Section summary—Final § 250.825(a) was derived from existing regulations under § 250.801(a) for subsurface safety devices on subsea trees. (Final § 250.810 similarly recodifies the existing regulatory requirements for dry trees.) This section of the final rule restructures the existing requirements and revises them for greater clarity and to use plain language. The final rule adds a requirement to install flow couplings above and below the subsurface safety devices, and removes the exception for wells incapable of flow. The final rule also adds a requirement to test all valves and sensors after installing a subsea tree and before the rig or installation vessel leaves the area.

Regulatory text changes from the proposed rule—BSEE revised final paragraph (a) to require the installation of flow couplings above and below the subsurface safety device and to remove the reference to a flow coupling that suggested it is part of the subsurface safety device. These changes were made based on comments received to clarify the use of flow couplings. BSEE also removed the reference to §§ 250.141 and 250.142. Those provisions and their associated procedures are generally available with respect to operations under part 250, so it is unnecessary to specifically reference them here.

Comments and responses—BSEE received public comments on this section and responds to the comments as follows:

Subsea Trees in the Arctic

Comment—A commenter stated that it is unclear whether proposed § 250.825 would prohibit subsea trees in Arctic operations due to the lack of a provision regarding setting depths in Arctic conditions. If allowed, the commenter recommended that BSEE specify in the regulation the allowable conditions and BSEE explain why the subsea trees would be BAST.

Response—All proposed oil and gas production operations on the OCS are required to have production safety equipment that is designed, installed, operated, and tested specifically for the surrounding location and environmental conditions of operation prior to approval. Under § 250.800(a), the final rule requires all oil and gas production safety equipment to be designed, installed, used, maintained, and tested to ensure the safety and protection of the human, marine, and coastal environments. BSEE understands that the Arctic may have unique operating conditions, however this rulemaking is not Arctic-specific. Although this final rule is intended to address production safety systems in all OCS regions, there are provisions that require the operator to address Arctic-related issues. For example, § 250.800 of the final rule requires operators to use equipment and procedures that account for floating ice, icing, and other extreme environmental conditions for production safety systems operated in subfreezing climates. In addition, BSEE may address Arctic-specific issues through a variety of mechanisms including separate rulemakings, guidance documents, or on a case-by-case basis. As previously explained in response to comments on § 250.107(c), BSEE is not making a BAST determination in this rulemaking, as a whole or for any specific provisions.

Departures

Comment—A commenter recommended that the waiver (departure) provisions of § 250.825(b) should be removed from the proposed rule as BSEE does not specify under what circumstances it would allow the installation of subsea tree valves and sensors without testing all the subsea tree valves and sensors. If BSEE does not agree to eliminate the waiver language from the proposed rule, the commenter requested that BSEE explain under what circumstances it would approve a subsea tree to be installed without testing all the subsea tree valves and sensors, and what criteria would be used in BSEE's decision making.

Response—As discussed previously, BSEE has removed the proposed language referring to departure requests under § 250.142 from the final rule. However, the operator may still submit a departure request related to the requirements of this section or any other requirement in the regulations. The provision for departure requests applies to any of the regulations under part 250, which does not need to be specified in individual sections.

Flow Couplings

Comment—A commenter recommended that BSEE not require "flow couplings" to conform to SPPE requirements since they are not a safety device and there are accordingly no API or industry standards for flow couplings. The commenter also noted that flow couplings are not identified as SPPE in §§ 250.801 through 250.803. The commenter asserted that flow couplings are not safety devices, but rather heavy-walled couplings used in conjunction with some down-hole safety device applications.

Response—BSEE agrees with the commenter that flow couplings should not be considered a safety device. However, they must be installed, as provided in API RP 14B, Recommended Practice for Design, Installation, Repair and Operation of Subsurface Safety Valve Systems. This document is incorporated by reference in this rulemaking and existing BSEE regulations. Flow couplings prevent wear and reduce the effects of turbulence on SSSV performance and are considered an integral part of the tubing string. BSEE revised this section to remove the inclusion of flow couplings as a safety device, but added a requirement to install flow couplings above and below the subsurface safety device.

Valve Testing

Comment—A commenter asserted that it is unclear whether proposed paragraph (b) requires the testing of all of the valves and sensors on the subsea tree, in addition to the SSSV, or only those valves that are designated as USVs, and the related pressure test sensors. The commenter noted that § 250.880(c)(4) establishes that these valves must pass the applicable leakage test prior to departure of the rig or installation vessel.

Response—Under this section the operator must test all of the valves and sensors associated with the subsurface safety devices before the rig or installation vessel leaves. If the valve was tested and passed after installation of the subsea tree, then that test is valid and the operator does not have to test again until required to conduct valve testing at regular intervals under § 250.880.

Specifications for SSSVs—Subsea Trees (§ 250.826)

Section summary—Final § 250.826 recodifies provisions from existing § 250.801(b) pertaining to surface-controlled SSSVs, safety valve locks, and landing nipples for subsea tree wells. Since BSEE does not allow subsurface-controlled SSSVs on wells with subsea trees, they are not covered by this provision. The final rule also updates the internal cross-references to the new provisions of subpart H.

Regulatory text changes from the proposed rule—BSEE revised the section by removing "flow couplings." This change was made based on comments received and to clarify that flow couplings are not SPPE.

Comments and responses—BSEE received one comment on this section and responds to the comment as follows:

Flow Couplings

Comment—A commenter asserted that "flow couplings" need not conform to the SPPE requirements since there are no API or industry standards for flow couplings and they are not a safety device. The commenter also noted that flow couplings are not identified as SPPE in §§ 250.801 through 250.803.

Response—BSEE agrees with the comment that flow couplings should not be considered a safety device and revised this section to remove the inclusion of flow couplings as a safety device. However, they must be installed, as provided for in API RP 14B, Recommended Practice for Design, Installation, Repair and Operation of Subsurface Safety Valve Systems. This document is incorporated by reference in this rulemaking in final § 250.802(b) and existing BSEE regulations. Flow couplings prevent wear and reduce the effects of turbulence on SSSV performance and are considered an integral part of the tubing string.

Surface-controlled SSSVs—Subsea Trees (§ 250.827)

Section summary—This section was derived from provisions in existing § 250.801(c), and rewritten for clarity and plain language to address requirements for surface-controlled SSSVs for wells with subsea trees. It requires operators to equip all tubing installations open to a hydrocarbon-bearing zone that is capable of natural flow with a surface-controlled SSSV. The final regulations require that surface controls for SSSVs for wells with subsea trees be located on the host facility.

Regulatory text changes from the proposed rule—BSEE revised this section for plain language and to clarify that operators must locate the surface controls for SSSVs associated with subsea tree wells on the host facility instead of on the site or at a remote location.

Comments and responses—BSEE received one comment on this section and responds to the comment as follows:

Comment—A commenter stated that it is not clear how to interpret the proposed "on site" requirement with respect to surface controls for subsea wells.

Response—BSEE agrees that the proposed language was potentially unclear and revised this section in the final rule to clarify that the surface controls must be located on the host facility.

Design, Installation, and Operation of SSSVs—Subsea Trees (§ 250.828)

Section summary—The final rule recodifies the provisions found at existing § 250.801(e) as final § 250.828, with changes made for clarity and plain language and to reflect that this section covers subsea tree installations. This section requires operators to design, install, and operate SSSVs to ensure reliable operation and establishes that a well with a subsea tree must not be open to flow while an SSSV is inoperable.

Regulatory text changes from the proposed rule—The final rule changed the language in proposed paragraph (a)—regarding alternate setting depths—from referring to requests for use of alternate procedures under existing § 250.141 to refer instead to approval of alternate depths by the District Manager on a case-by-case basis. This revision better aligns this section with final § 250.814(a) and with the language in the existing regulation.

BSEE also revised final paragraph (b) to clarify that the well must not be open to flow while an SSSV is inoperable, unless specifically approved by the District Manager in an APM. The final rule also revised paragraph (c) by adding a reference to § 250.880 for additional SSSV installation, maintenance, repair, and testing requirements.

Comments and responses—BSEE received public comments on this section and responds to the comments as follows:

Inoperable SSSVs

Comment—A commenter recommended that BSEE include language requiring operators to shut-in a well if an SSSV is inoperable as well as language eliminating the possibility of an exception to this requirement.

Response—BSEE does not agree with the suggestion that it should never allow exceptions to this shut-in provision. There may be times where an exception to this provision is warranted and appropriate. However, the operator must request an exception from BSEE in an APM, provide justification for that exception, and secure BSEE approval.

Temporary Flow During Routine Operations

Comment—A commenter suggested that BSEE should add language to this section that allows for temporary flow during routine operations and well troubleshooting. The commenter recommended revising proposed paragraph (b) to read, "The well must not be open to flow while an SSSV is inoperable once the subsea tree is installed or BSEE has approved the specific operation that requires flow with an inoperable SSSV."

Response—No changes are necessary. BSEE does not consider flowback of a subsea well through production equipment that has not been approved by BSEE to be a routine operation. Existing § 250.605 statesthat the operator cannot commence any subsea well-workover operations, including routine operations, without written approval from the District Manager. Temporary flowback of a subsea well may involve the use of non-dedicated production equipment, or production equipment installed on a drilling rig, neither of which is part of the normal production flow path for the well. However, final § 250.828(b) provides that the operator must request an exception from BSEE in an APM and secure BSEE approval.

Measuring Leakage in a Subsea Well

Comment—A commenter asserted that the formula provided in this section cannot be used for any well other than a dry gas well and that there is no method to measure the leakage in a subsea well. The commenter stated that subsea well leakage must be calculated and may vary with tree configuration or tree (USV) valve leakage or failure.

Response—BSEE does not agree that the formulas required by this section, through incorporation of API RP 14B, are inappropriate for subsea wells. API RP 14B describes the required testing procedures, including any formulas that are needed for calculating leakage rates. If the operator has additional questions about calculating a particular leakage rate, the operator can contact the appropriate District Manager.

SSSV Testing

Comment—A commenter stated that there are multiple ways to test an SSSV in a subsea well, and that it is not necessarily the case that the test procedure will be as outlined in Annex E of API RP 14B. The commenter recommended modifying the proposed language to indicate that there are acceptable alternative test methods. The commenter also stated that the proposed rule does not directly refer to the testing requirements specified for subsurface safety equipment as described in § 250.880 and suggested adding a reference in final § 250.828(c) to § 250.880.

Response—BSEE agrees with the suggestion to add a reference to § 250.880 for SSSV testing in final § 250.828(c) and has done so. However, it is not necessary to add the suggested language regarding acceptable alternative methods, since an operator may submit a request to the District Manager to use an alternate test procedure under existing § 250.141.

Subsurface Safety Devices in Shut-in Wells—Subsea Trees (§ 250.829)

Section summary—This section recodifies the requirement under existing § 250.801(f) for subsurface safety devices on shut-in subsea tree wells. Operators must equip new completions that are perforated but not placed on production, as well as completions shut-in for a period of 6 months, with a pump-through-type tubing plug, an injection valve capable of preventing backflow, or a surface-controlled SSSV, whenever the surface control has been rendered inoperative. The final rule also clarifies when a surface-controlled SSSV is considered inoperative. BSEE included this clarification because the hydraulic control pressure to an individual subsea well may not be able to be isolated due to the complexity of the hydraulic distribution of subsea fields.

Regulatory text changes from the proposed rule—BSEE made minor revisions to this section in the final rule, such as removing "BSEE" from before "District Manager." BSEE also slightly revised the final language to be more consistent with the language of final § 250.815, and removed an unnecessary cross-reference to § 250.141.

Comments and responses—BSEE received public comments on this section and responds to the comments as follows:

Maintaining, Inspecting, Repairing, and Testing SSSVs

Comment—A commenter recommended revising the proposed language to require operators to maintain, inspect, repair, and test all SSSVs in accordance with the Deepwater Operations Plan (DWOP) or API RP 14B. The commenter also suggested removing proposed § 250.829(a)(3)(ii) since the reference pressure sensor is normally internal to the subsea control module, used for housekeeping only, and it may not be available to the topside system.

Response—The commenter's first concern is addressed in § 250.828(c) of the final rule, which requires compliance with the DWOP and API RP 14B. It is not necessary to restate those requirements here. With respect to the commenter's second concern, BSEE understands that there may be situations where another approach would be appropriate and, in such cases, the operator may request approval to use an alternate procedure under § 250.141.

Subsurface Safety Devices in Injection Wells—Subsea Trees (§ 250.830)

Section summary—This section was derived from existing § 250.801(g), rewritten in plain language, and modified to require operators to install a surface-controlled SSSV or an injection valve capable of preventing backflow in all injection wells, unless the District Manager determines that the well is incapable of natural flow. The substance of final § 250.830 for subsea tree wells is similar to the regulatory sections pertaining to final § 250.816 for dry tree wells. BSEE also consolidated similar provisions from existing § 250.801 to improve readability and understanding of the final rule.

Regulatory text changes from the proposed rule—BSEE did not make any significant changes in the final rule to the proposed section.

Comments and responses—BSEE did not receive any comments on this section.

Alteration or Disconnection of Subsea Pipeline or Umbilical (§ 250.831)

Section summary—This new section codifies policy and guidance from existing BSEE Gulf Of Mexico Region NTL No. 2009–G36, "Using Alternate Compliance in Safety Systems for Subsea Production Operations." BSEE intends to rescind this NTL and remove it from the BSEE Web page after the effective date of the final rule. The final rule states that, if a necessary alteration or disconnection of the pipeline or umbilical of any subsea well would affect an operator's ability to monitor casing pressure or to test any subsea valves or equipment, the operator must contact the appropriate District Office at least 48 hours in advance and submit a repair or replacement plan to conduct the required monitoring and testing.

Regulatory text changes from the proposed rule—This section was revised by removing the word "BSEE" before "District Office" for consistency with other sections of the final rule and because it was superfluous.

Comments and responses—BSEE received public comments on this section and responds to the comments as follows:

Pipelines

Comment—A commenter stated that this section is unnecessary because the process to repair or modify a subsea pipeline must be approved by BSEE's GOM Regional Pipeline Section.

Response—BSEE disagrees with the comment. Without an umbilical, the operator is unable to monitor casing pressure and test USVs. The existing pipeline regulations (subpart J) do not address the issues related to testing of the valves or the monitoring of casing pressure that are relevant and necessary to this rulemaking under subpart H. The operator needs to test these valves for functionality and leakage rate, and be able to monitor for sustained casing pressure. The physical alteration or disconnection of the subsea flowline system, including the umbilical, may require submission of a pipeline permit application to the Regional Supervisor. However, those actions address different considerations than are addressed by this section.

System Alterations

Comment—A commenter suggested removing the proposed prohibition against altering or disconnecting the pipeline or umbilical until a repair or replacement plan is approved. The commenter also asserted that this proposed requirement would affect subsea operations and impose new reporting and review requirements on industry.

Response—BSEE does not agree that the suggested changes are necessary. BSEE reviews and approves system alterations to ensure compliance with other regulations. Without an umbilical, the operator is unable to monitor casing pressure and test USVs as required under existing § 250.520; thus, BSEE must have an operator's plans for maintaining compliance with this requirement before the operator disconnects. If the operator's proposed operation of disconnecting/removing flowline/umbilical would cause the operator to be unable to perform required testing on the subsea well, then the District Manager must be involved.

Additional Safety Equipment—Subsea Trees (§ 250.832)

Section summary—This section of the final rule was derived from existing § 250.801(i), rewritten for greater clarity and to use plain language, and modified to reflect that this section covers subsea tree installations. It requires operators to equip all tubing installations that have a wireline- or pump down-retrievable subsurface safety device with a landing nipple, flow couplings, or other protective equipment above and below the SSSV in order to provide for the setting of the SSSV. The last sentence of existing § 250.801(i), generally requiring closure of surface-controlled SSSVs in certain circumstances, is no longer needed for wells with subsea trees, because this final rule establishes more specific surface-controlled SSSV closure requirements in final §§ 250.838 and 250.839.

Regulatory text changes from the proposed rule—BSEE made only minor changes to the proposed language in order to be more consistent with final § 250.818 and existing regulations.

Comments and responses—BSEE did not receive any public comments on this section.

Specification for Underwater Safety Valves (USVs) (§ 250.833)

Section summary—Final § 250.833 derives in part from existing § 250.802(c), rewritten for greater clarity and use of plain language, with references to SSVs in the existing regulation deleted in order to differentiate the requirements for the use of dry trees and subsea trees. The portions of the existing rule concerning SSVs for dry trees are codified in final § 250.819. This section now requires all USVs, and their actuators, to conform to the requirements specified in §§ 250.801 through 250.803. Final § 250.833 also clarifies the designations of the primary USV (USV1) and the secondary USV (USV2), and clarifies that an alternate isolation valve (AIV) may qualify as a USV. Final § 250.833(a) requires that operators install at least one USV on a subsea tree and designate it as the primary USV, and that the operator inform BSEE if the primary USV designation changes. Final § 250.833(a) also provides that the primary USV must be located upstream of the choke valve.

Regulatory text changes from the proposed rule—BSEE updated the proposed section to include references to API Spec. 6A and API Spec. 6AV1. In final paragraph (b), "BSEE" was removed before "District Office" for consistency and because it was unnecessary.

Comments and responses—BSEE received public comments on this section and responds to the comments as follows:

Alternate Isolation Valves

Comment—A commenter recommended that BSEE define the term "Alternate Isolation Valve (AIV)," as it is not a term generally used in the industry or defined in any of the relevant standards, such as API Spec. 6A or API Spec. 17D. The commenter stated that the BSEE regulations need to fully define the term in the regulations so that it is clear which valves the operator must describe.

Response—An AIV is any valve, in addition to the primary and secondary USVs, that acts as the USV. There are multiple names for an AIV, including "flowline isolation valve." This term was used to emphasize that any valve in the subsea system that may act as a USV must meet the same requirements as the primary and secondary USV. BSEE did not make any significant changes to the proposed regulation with respect to this issue so as not to artificially limit the scope of the term "flowline isolation valve."

Redundant USVs

Comment—A commenter recommended revising the language of this proposed section to reflect that there are cases in which redundant USVs are installed. The commenter recommended revising the proposed language to require operators installing redundant USVs to designate one USV on a subsea tree as the primary USV and to install that valve upstream of the choke valve.

Response—No changes are necessary. This provision in the proposed rule, as carried forward into the final rule, already addressed the situation in the manner described by the commenter. Final § 250.833(b) addresses the requirements for redundant USVs.

Use of USVs (§ 250.834)

Section summary—Final § 250.834, establishing basic requirements for the inspection, installation, maintenance, and testing of USVs, is derived from existing § 250.802(d). BSEE revised the existing provision to provide greater clarity, to use more plain language, and to remove references to SSVs in order to separate the requirements applicable to dry trees from those applicable to subsea trees. This final section also adds language to expressly include USVs designated as primary or secondary as well as any AIV that acts as a USV, and to clarify that all USVs must be installed, maintained, inspected, repaired, and tested in accordance with applicable DWOPs.

Regulatory text changes from the proposed rule—This section was revised to clarify that these requirements apply to any valve designated as the primary USV and to include a cross-reference to final § 250.880 for additional USV testing requirements. The reference to § 250.880 was added based on comments received and to clarify that USV testing requirements are also found in final § 250.880.

Comments and responses—BSEE received public comments on this section and responds as follows:

Primary and Secondary USVs

Comment—A commenter recommended that the new regulation be consistent with the intent of the existing NTL No. 2009–G36, which requires only the primary USV (USV1) to pass the leak test criteria, given that secondary valves are not required by the regulations. The commenter asserted that testing secondary USVs to the same standard as the primary USV should not be required until a secondary USV becomes a primary USV. The commenter also recommended that BSEE include a reference to § 250.880 in § 250.834, as the proposed regulatory language did not directly refer to the testing requirements specified for USVs described in § 250.880.

Response—BSEE agrees with the commenter and has revised final § 250.834 to require the operator to install, maintain, inspect, repair, and test only the valve designated as the primary USV in accordance with this subpart, the applicable DWOP, and API RP 14H. BSEE also agrees with the commenter with respect to the reference to § 250.880 and has added that reference in the final section.

Specification for All Boarding Shutdown Valves (BSDVs) Associated With Subsea Systems (§ 250.835)

Section summary—Final § 250.835 is a new section that establishes minimum design and other requirements for BSDVs and their actuators. This section sets out the requirements for use of a BSDV, which for subsea systems assumes the role of the SSV required for a traditional dry tree. The BSDV is intended to ensure the maximum level of safety for the production facility and the people aboard the facility. Because the BSDV is the most critical component of the subsea system, it is necessary to subject this valve to rigorous design and testing criteria.

Regulatory text changes from the proposed rule—BSEE revised this section in the final rule by replacing the initial reference to "BSDVs" with the phrase "new BSDVs and any BSDVs removed from service for remanufacturing or repair." This was added to address the applicability of the new requirements for BSDVs by clarifying that the provision is only applicable to new BSDVs and those removed from service for remanufacturing or repair.

Comments and responses—BSEE received public comments on this section and responds to the comments as follows:

BSDV Location

Comment—A commenter requested clarification on the BSDV location requirement for floating facilities. Another commenter recommended using the current draft language from API 14C for BSDV location and allowing engineering discretion in determining the appropriate location with respect to FPSs. The commenter stated that the prescriptive language of the proposed rule would limit flexibility in the DWOP process and proposed alternate language regarding the BSDV's location.

Response—No changes are necessary. The location of the BSDV was specified in the proposed rule, and is included in the final rule, to ensure the safety of the facility. Under § 250.835(c), when the pipeline riser boards the facility, it must be equipped with a BSDV installed within 10 feet of the first point of access to that riser. Because the BSDV is crucial to the facility's safety, the final regulations (§§ 250.836 and 250.880) seek to ensure its reliability by requiring more stringent testing (*i.e.,* zero allowable leak-rate) than other valves. Similarly, because of the critical role of the BSDV, it is the first valve that must close in order to isolate production from the facility during an abnormal event or emergency. This provision decreases the possible exposure of the pipeline upstream of the BSDV to dropped objects, fire and other hazards. The shutdown valve needs to be as close as possible to where the pipeline riser boards the facility, so that the source of flow is shut-in before the area of damage, if there an emergency on the facility. The DWOP process is designed to allow for some flexibility in design, but the operator must comply with the regulations by demonstrating that its DWOP provides the same level of safety and environmental protection as provided by the regulations.

Use of BSDVs (§ 250.836)

Section summary—Final § 250.836 establishes a new requirement that operators must install, inspect, maintain, repair and test all new BSDVs and BSDVs removed for repair or remanufacture according to the provisions of API RP 14H. This section also specifies what the operator must do if a BSDV does not operate properly or if fluid flow is observed during the leakage test.

Regulatory text changes from the proposed rule—BSEE revised this section of the final rule for clarity and to align more closely with § 250.820. Final § 250.836 also clarifies that it is applicable to new BSDVs and to any BSDV removed from service for remanufacturing or repair. BSEE also added language in this section to clarify that operators must install and repair (as well as inspect, maintain, and test) BSDVs in accordance with API RP 14H, as incorporated in this section. This is also consistent with similar language used in final §§ 250.820 and 250.834 for SSVs and USVs, respectively. BSEE also updated the section to refer expressly to the testing requirements of § 250.880 and to state that if there is any gas fluid and/or liquid fluid flow observed during testing, operators must shut-in all sources to the BSDV and immediately repair or replace the valve. BSEE made these changes for consistency and clarity to ensure operators take proper actions in the specific situation.

Comments and responses—BSEE received public comments on this section and responds to the comments as follows:

Repair or Replacement of Leaking BSDVs

Comment—Commenters stated that the proposed requirement to repair or replace a leaking BSDV before resuming production is not consistent with the requirement to immediately repair or replace the valve, as stated in proposed § 250.880(c)(4)(iii). Also, given the potential safety implications associated with a leaking BSDV, commenters recommended that a leaking BSDV should be required to be repaired or replaced before resuming production on any manned facility. The commenters recommended that the language be consistent with proposed § 250.880(c)(4)(iii).

Response—BSEE agrees with the comment that this provision should be consistent with § 250.880(c)(4)(iii) and has revised the final rule to require that the operator immediately repair or replace a BSDV if it does not operate properly.

Emergency Action and Safety System Shutdown—Subsea Trees (§ 250.837)

Section summary—Final § 250.837, regarding emergency actions and safety system shutdowns for subsea tree installations, replaces existing § 250.801(j). It also addresses the use of a MODU or other type of workover vessel in an area with producing subsea wells. In addition, this section of the final rule adds new requirements to clarify allowances for valve closing sequences for subsea installations and specifies actions required for certain situations. Final §§ 250.837(c) and (d) describe a number of emergency situations requiring the operator to shut-in and to close the safety valves and, in certain situations, to bleed the hydraulic systems.

Regulatory text changes from the proposed rule—Throughout this section, "BSEE" was removed from before "District Manager" for consistency and because it was superfluous. The final rule also incorporates several minor, non-substantive formatting and clarifying edits. BSEE revised paragraph (b)(2) to clarify that real-time communication must be established between the MODU or other type of workover vessel and the production facility control room. BSEE also replaced "MODU" with "MODU or other type of workover vessel" throughout paragraph (b). In addition, BSEE clarified that the driller or other authorized rig personnel must secure the well using the ESD station located near the driller's console. BSEE removed the phrase "on the host platform" from paragraph (c)(3) because it was superfluous in the context it was used. In addition, BSEE revised final paragraph (c)(5) by adding a reference to "other workover vessel" for consistency with paragraph (b)(2).

Comments and responses—BSEE received public comments on this section and responds to the comments as follows:

Emergency Planning

Comment—A commenter stated that no amount of detail in the regulations will address all concerns, and that rules cannot be revised or updated in a timely manner. The commenter suggested that BSEE hold operators accountable for emergency planning consistent with their management systems and the types of facilities they operate.

Response—BSEE agrees that no amount of detail in the regulations will cover all concerns; however, that does not negate our obligation to continuously improve the regulations in order to protect personnel safety and the environment. BSEE included this provision to provide direction and clarity for operators with regard to certain reoccurring events. BSEE's existing regulations contain other provisions for emergency planning, including a requirement that operators address emergency response and control in their SEMS plans under subpart S of this part (*see* § 250.1918 for more information). These complementary provisions will work together to advance safety and environmental protection in OCS operations.

Geographic Impact of Storms

Comment—A commenter suggested that the process for establishing the geographic impact of an emergency requiring shut-in for oil and compression gas wells is unclear.

Response—The geographic impact of any given emergency will be highly dependent on the fact-specific nature of that emergency. As used in this section, tropical storms are just one example of an emergency; there may be other types of emergencies that require shut-in. In the event of a specific (*e.g.*, a named) storm, any required shut-ins will be determined by the applicable storm path. This final rule will require the operator to shut-in all subsea wells in that path, not just oil and gas compression wells. If an operator has any questions or concerns about whether or when to shut-in, the operator may contact the appropriate District Manager for guidance.

Impending Named Tropical Storm or Hurricane

Comment—Several commenters suggested that the term "impending named tropical storm or hurricane" needs to be better defined because some named storms would not necessarily require shutting in. Commenters stated that, if the term is meant only as an example of an emergency and is not meant to be all-inclusive, then the language and title of the proposed rule should be clarified or changed. The comment suggested regulatory language providing that BSEE would not need to require operators to shut-in some subsea wells (such as wells with a subsurface safety device) during a storm.

Response—BSEE does not agree with the commenters' suggestions. Changing the title would potentially confuse the scope of this regulation since tropical storms and hurricanes are only examples of emergencies that could require shut-ins; other, non-storm emergencies could also require shut-ins. If an operator has any questions or concerns about whether or when to shut-in as a result of a specific storm or other emergency, the operator may contact the appropriate District Manager for guidance. BSEE also disagrees with the suggestion that wells with subsurface safety devices need not be shut-in during a storm when other wells are shut-in. In fact, all producing wells have subsurface safety devices of some kind, so the commenter's suggestion could result in no wells being shut-in during a storm. This would be contrary to longstanding and accepted safety practices.

Responsibilities for Wells

Comment—A commenter stated that the proposed language presupposes that the company under whose direction a MODU or workover vessel is operating is the operator responsible for any wells that may be subject to suspension of production. The commenter asserted that such responsibility should only be placed with the lease operator, notwithstanding the proposed rule's apparent assignment of responsibility with the MODU operator. The commenter suggested that BSEE revise the proposed wording in order to place the burden on the operator of producing subsea wells to take action when a MODU or other type of workover vessel is in the area.

Response—BSEE does not agree that the suggested changes are needed. This regulation is primarily directed at the lease operator. However, under § 250.146(c), those persons actually performing an activity subject to part 250 are jointly and severally responsible for compliance with those requirements; this includes the lessee, the operator, and the person actually performing the activity. This would include a MODU operator if that MODU operator is performing activities subject to regulation under part 250. Thus, it is important that the relevant parties coordinate their activities, as well as their communication and control procedures, to ensure compliance with the applicable regulatory requirements.

Drilling

Comment—A commenter asserted that the term "driller" as used in the proposed language is ambiguous and requires further clarification. The commenter stated that "driller" is not defined in the BSEE's regulations, is overly prescriptive, and is subject to multiple interpretations, including either the drilling contractor or the person serving in the position known as the "driller" on the MODU. The commenter suggested that the wording could also be interpreted as precluding an "assistant driller," "toolpusher," or others, from taking action to initiate the needed shutdown.

Response—BSEE agrees with the commenter and has revised this section of the final rule to add "(or other authorized rig floor personnel)" after "driller."

ESD Location

Comment—A commenter suggested that, for consistency with existing §§ 250.406(a), 250.503, and 250.603, the reference to "ESD on the well control panel located on the rig floor" be changed to "ESD station near the driller's console or well-servicing unit or operator's work station." The commenter noted the importance of communicating with others in order to shut-in other potentially affected wells, and stated that such information should be identified in the plan submitted to BSEE for approval in advance of operations. The commenter also noted that the proposed wording presupposes that only a single facility's wells could be affected and seemingly fails to place an obligation on that facility's operator (or the operator of any potentially affected wells on other facilities) to shut-in the wells under their control upon receiving notification from the MODU or workover vessel.

Response—BSEE agrees with the commenter's suggestion regarding placement of the ESD station and has changed the text in final § 250.837(b)(2) to refer to the ESD station near the driller's console. For securing the other wells on the platform, the operator needs to establish direct, real-time communication between the MODU or other workover vessel and the production facility. According to § 250.837(b)(2), operators must immediately secure the well directly under the MODU using the ESD station near the driller's console while simultaneously communicating with the platform to shut-in all affected wells.

MODU or Vessel

Comment—A commenter recommended that wherever the term "MODU" appears in proposed § 250.837, it should be replaced by the term "MODU or vessel." The commenter also stated that it is not clear that the requirement to shut-in all wells could be triggered by a dropped object in the event that communication is lost between the MODU or vessel and the platform for twenty minutes or longer. The commenter asserted that the shut-in needs to be implemented from the platform, and suggested that the shut-in requirement does not need to be applied to a well that is under the direct control of the MODU/vessel itself. The commenter also indicated that the requirement to shut-in should be reversed as soon as reliable communication is re-established between the MODU/vessel and the platform.

Response—BSEE agrees with the commenter's suggestion for changing the references to "MODU," and has replaced that term throughout this section with "MODU or other type of workover vessel," as used in the introductory sentence in proposed paragraph (b). BSEE also agrees that the shut-in needs to be implemented from the facility; however, that fact does not support the commenter's suggestion that the shut-in requirements should not apply to a well under direct control of a MODU. (In fact, such a well should be shut-in already, since the MODU would be there to work on the well.) As stated in paragraph (b)(2), all wells that could be affected by the dropped object—whether under control of a MODU or other workover vessel or of a platform—must be shut-in to prevent a spill.

With regard to the comment regarding reversal of a shut-in, BSEE agrees that a shut-in can be reversed once communication is restored and the District Manager approves resumption of operations.

What are the maximum allowable valve closure times and hydraulic bleeding requirements for an electro-hydraulic control system? (§ 250.838)

Section summary—Section 250.838 in the final rule establishes maximum allowable valve closure times and hydraulic system bleeding requirements for electro-hydraulic control systems. Final paragraph (b) applies to electro-hydraulic control systems when an operator has not lost communication with its rig or platform. Final paragraph (c) applies to electro-hydraulic control systems when an operator loses communication with its rig or platform. Each paragraph includes a table containing valve closure times and hydraulic system bleeding times for BSDVs, USVs, and surface-controlled SSSVs under various scenarios. BSEE derived the tables from Appendices to NTL No. 2009–G36. (Since this final rule codifies the provisions from NTL No. 2009–G36, BSEE plans to rescind the NTL and remove it from the BSEE Web page after the effective date of the final rule.)

Regulatory text changes from the proposed rule—Paragraphs (b) and (d) were updated to reflect comments received, as discussed later, and to be consistent with the language of NTL No. 2009 G–36. In addition, throughout the section, "BSEE" was removed before "District Manager" and "District Office" for consistency and because it was superfluous.

Comments and responses—BSEE received public comments on this section and responds to the comments as follows:

MODU or Vessel

Comment—A commenter recommended that the word "rig" and the term "MODU" be replaced by "MODU/offshore support vessel" throughout this section.

Response—BSEE generally agrees with this comment and has replaced the terms "rig" and "MODU" with "MODU or other type of workover vessel" throughout this section of the final rule. This revision is also consistent with the terminology in final § 250.839.

Closure and Bleed Requirements When Communication is Maintained

Comment—A commenter asserted that proposed paragraph (b) was confusing in that it would require an operator that has not lost communication with its rig or platform to comply with the maximum allowable valve closure and hydraulic system bleed requirements listed in that paragraph's table. The commenter recommended revising the language to require compliance with the valve closure times and hydraulic bleed requirements listed in either the table or in an operator's approved DWOP, as long as communication is maintained.

Response—BSEE agrees with the commenter's suggested language, which is consistent with BSEE's original intent. Accordingly, BSEE has revised paragraph (b) in the final rule to require that the operator must comply with the maximum allowable valve closure times and hydraulic system bleeding requirements listed in the table or the operator's approved DWOP, as long as communication is maintained.

Valve Closure Timing

Comment—A commenter suggested revising the language in proposed § 250.838(b)(2) (Pipeline pressure safety high and low (PSHL)) to provide the same requirements for bleeding both high pressure (HP) and low pressure (LP) hydraulic systems. The commenter also suggested adding language to proposed § 250.838(b)(4) in order to prevent a surface-controlled SSV from closing on a flowing well, since the HP system will vent faster than the LP system.

Another commenter suggested revising the language in proposed § 250.838(d)(2)—(Pipeline PSHL) to require a shut-down time that is determined by hydraulic analysis and confirmed during commissioning instead of using the times specified in that paragraph. The commenter asserted that it is difficult to close valves in 5 minutes on most deepwater, long step-out systems.

In addition, the commenter suggested revising the proposed requirement in § 250.838(d)(5) (Dropped Object—subsea ESD (MODU)) to "initiate unrestricted bleed immediately" upon communication loss for both LP and HP systems because that action would almost always result in the surface-controlled SSV closing on a flowing well. Specifically, the commenter requested that BSEE add language to this paragraph specifying that the LP hydraulic system must be vented and valves closed before the HP system is vented.

A commenter asserted that the table of valve closure and hydraulic bleeding requirements in proposed paragraph (b) should be consistent with the table in NTL No. 2009–G36, which explains what to do in case an operator cannot meet valve closure times when it has a loss of communications. The commenter stated that the table in § 250.838(d) requires immediate closure of tree valves upon Subsea ESD (MODU), and asserted that some control systems cannot meet that timing requirement, especially with regard to the LP system.

Response—BSEE agrees with the suggestion to revise the table to be consistent with NTL No. 2009 G–36 and has included those revisions in the final rule. BSEE disagrees, however, with the other changes to the tables in paragraphs (b) and (d) recommended by the commenters. The closure times in those tables are based on the best practices that are established at this time. These are reasonable, but conservative, limits that conform to the concept of having redundant and verified (*i.e.,* tested) mechanical barriers in place in the event of an emergency or abnormal condition requiring isolation of hydrocarbon flow. If communication between the operator and the production facility, or the MODU or other type of workover vessel, is lost, the system must then operate the same as a direct hydraulic system. If the system cannot meet the shut-in timing requirements in the table when communication is lost, then the operator needs to shut-in the facility. For a host facility that is a significant distance from the subsea wells, it may take an unacceptable amount of time to bleed the hydraulic lines should an event occur requiring that the hydraulic system be bled. Because the operator needs to be able to shut-in the facility as soon as possible during that type of event, the system must be able to comply with the timing requirements of the regulation. Thus, BSEE does not agree that the closure times in the tables should be replaced with a requirement that closure times be determined by hydraulic analysis and confirmed during commissioning for specific facilities. However, specific subsea valve closure timing and hydraulic bleed capability for individual facilities may be submitted for review and potential approval by BSEE in a DWOP.

What are the maximum allowable valve closure times and hydraulic bleeding requirements for a direct-hydraulic control system? (§ 250.839)

Section summary—Final § 250.839 establishes maximum allowable valve closure times and hydraulic system bleeding requirements for direct-hydraulic control systems. It contains a table of valve closure/hydraulic bleed timing requirements comparable to those in final § 250.838(b).

Regulatory text changes from the proposed rule—Throughout this section, "BSEE" was removed before "District Manager" for consistency and because it was superfluous. Paragraph (b) was updated to reflect comments received and to be consistent with the language of NTL No. 2009 G–36 and final § 250.838.

Comments and responses—BSEE received public comments on this section and responds to the comments as follows:

MODU or Vessel

Comment—A commenter recommended that the term "MODU" be replaced by "MODU/offshore support vessel" throughout this section.

Response—BSEE agrees and has changed the term "MODU" to "MODU or other type of workover vessel" in final paragraph (b)(5). This revision is also consistent with the terminology in final §§ 250.837 and 250.838.

Design, Installation, and Maintenance—General (§ 250.840)

Section summary—The final rule includes the requirements previously found in existing § 250.802(a). It establishes basic requirements for the design, installation, and maintenance of all production facilities and equipment. BSEE revised the existing language to improve clarity and to use plain language and added several new production components (*e.g.,* pumps, heat exchangers) to this section that were not included in existing § 250.802(a).

Regulatory text changes from the proposed rule—BSEE did not make any significant changes to this proposed section in the final rule.

Comments and responses—BSEE did not receive any comments on this section.

Platforms (§ 250.841)

Section summary—The section includes the requirements previously found in existing § 250.802(b). BSEE also added new requirements for facility process piping in final § 250.841(b). The new paragraph requires adherence to existing industry standards (*i.e.,* API RP 14E and API 570), which are incorporated by reference in final § 250.198. The final rule also specifies that the District Manager may approve temporary repairs to facility piping on a case-by-case basis for a period not to exceed 30 days.

Regulatory text changes from the proposed rule—BSEE did not make any significant changes to this section in the final rule.

Comments and responses—BSEE received public comments on this section and responds to the comments as follows:

Crewing for Arctic Facilities

Comment—A commenter stated that the OCS Platform requirements in the proposed section did not specify any manning requirements and asserted that the regulations should include specific manning requirements for Arctic OCS facilities and should prohibit unmanned facilities.

Response—Appropriate crewing is a facility—and operation-specific issue. As previously stated in part IV.B.3, BSEE understands that the Arctic OCS presents unique operating conditions and other challenges. BSEE recently addressed exploratory drilling requirements for the Arctic OCS in a final rule published on July 15, 2016 (81 FR 46477), and BSEE may address other Arctic-specific issues in future rulemakings, guidance documents, or on a case-by-case basis.

Piping Repairs

Comment—A commenter asserted that limiting the duration of temporary piping repairs to 30 days could be problematic since a significant fabrication or construction backlog could hinder final repairs. The commenter also stated that weather and logistics will play a key role when the permanent repair is actually being conducted; thus, it may take more than 30 days to complete the permanent repair. The commenter suggested adding language to this provision to allow the District Manager to approve extensions to the duration of a temporary repair in 30-day increments. Another commenter requested clarification on whether the 30-day limit on approvals of the duration of temporary repairs to facility piping is only for piping in hydrocarbon service or for all facility piping.

Response—BSEE does not agree that the suggested changes are appropriate. BSEE considers pressures, type of systems, and other factors in considering requests for approval of temporary repairs to piping. The longer the temporary repair is in place, the greater the risk that the repair will fail, given that the temporary repair material is generally not designed for long-term use in accordance with industry standards for permanent piping (*e.g.,* API RP 14E, API 570). Moreover, the temporary repair materials are often not fire-rated, which also increases risks. Based on BSEE's experience, 30 days is typically enough time to make permanent repairs. If there are concerns about the length of the 30-day period for temporary repairs, the operator should contact the appropriate District Manager. The time limit on approval of temporary repairs applies to all facility piping, not just piping in hydrocarbon service.

Platform Definition

Comment—A commenter stated that although this proposed section would require compliance with specific standards for OCS platforms, the term "platform" is not defined in the regulations. The commenter requested that a definition of "platform" be added to the final regulations. The commenter added that, in the Arctic, OCS facilities are currently built on gravel islands and may be installed on bottom-founded offshore structures in the future. The commenter suggested that the final regulations should clarify whether § 250.841 will apply to Arctic OCS operations conducted on gravel islands or bottom-founded offshore structures, or whether an additional Arctic-specific section will be added to address these facility types.

Response—As previously explained, BSEE understands that the Arctic presents some unique situations, and BSEE may address Arctic-specific issues in future rulemakings, guidance documents, or on a case-by-case basis. In the meantime, adding a definition of "platform," particularly one addressing Arctic-specific circumstances, is beyond the scope of this rulemaking. However, when BSEE reviews a permit, it considers the specific operating and environmental conditions. Gravel islands are different from platforms in several ways, and may need to meet different requirements or permit conditions. If there are any questions concerning the applicability of this final rule to gravel islands, the operator should contact the appropriate District Manager for evaluation on a case-by-case basis. (For activities on the Arctic OCS, any reference in this part to District Manager means the BSEE Regional Supervisor for the Alaska region.)

API 570

Comment—One commenter stated that this section should not refer to API 570 because that standard was developed for downstream operations, not offshore oil and gas upstream operations. Thus, the commenter asserted that there would be many potential conflicts if that document were applied to offshore operations as proposed. The commenter recommended that, before the document is incorporated in its entirety, BSEE review the document and determine what sections are applicable to offshore production operations.

Response—BSEE disagrees with the comment. API 570 is the industry standard for piping. Although API 570 was developed primarily for the petroleum refining and chemical process industries, it states that it may be used for any piping system. Moreover, the commenter did not assert any specific conflicts related to using API 570 for offshore production operations. In fact, this document is extensively cited and widely used by the offshore oil and gas industry, especially with respect to inspection of piping (*e.g.,* inspection methods, inspection frequency, non-destructive testing, and corrosion rates for determining the life expectancy of the piping). These issues are as applicable to offshore operations as they are to onshore operations, and are critical for ensuring the mechanical integrity of the piping. If any operator believes there is a specific conflict between API 570 and that operator's offshore operations, the operator should contact the appropriate District Manager for guidance.

Comment—A commenter suggested adding language to proposed § 250.841(b) to clarify that API 570 applies downstream of the boarding valve for design requirements and to clarify the types of facility piping to which the provisions regarding temporary repairs will apply.

Response—BSEE does not agree that the suggested additions are necessary. The proposed and final regulatory text for § 250.841(b) refers to "production process piping." Subpart H applies to any piping confined to a production platform that is downstream of the BSDV. Piping upstream of the BSDV is covered by the pipeline regulations, under subpart J. In addition, as previously stated, the provisions regarding temporary repairs apply to all facility piping.

Jurisdiction

Comment—A commenter asserted that BSEE should limit the requirements under paragraph (b), as applied to floating facilities, to equipment/systems and piping over which BSEE has jurisdiction.

Response—BSEE does not need to revise paragraph (b) as suggested. These regulations apply only to operations that are under BSEE authority. This regulation ensures that operations with respect to platform production facilities and platform production process piping are conducted in a manner that prevents or minimizes the likelihood of fires (*e.g.,* from leaking pipes carrying produced hydrocarbons) and other occurrences that may cause damage to property or the environment, or endanger life or health. Thus, BSEE's regulation of these operations is within the scope of its legal authority to regulate platforms erected on the OCS and engaged in the production of oil or gas.

Approval of Safety Systems Design and Installation Features (§ 250.842)

Section summary—Final § 250.842 recodifies the requirements of existing § 250.802(e), regarding applications for approval of production safety systems, including the service fee associated with the submittal of those applications. This section outlines the requirements of a production safety system application and requires adherence to several API standards pertaining to the design of production safety systems and related piping and electrical systems (*i.e.,* API RP 14C, API RP 14E, API RP 14F or RP 14FZ, API RP 14J, API RP 500 or RP 505).

The final rule also requires completion of a hazards analysis during the production safety system design process and requires a hazards analysis program to assess potential hazards during the operation of the platform. The final rule also requires that the designs for mechanical and electrical systems be reviewed, approved, and stamped by a registered professional engineer (PE). It also requires that a registered PE certify the as-built piping and instrumentation diagrams (P&IDs). This section also specifies that the PE must be registered in a State or Territory of the U. S. and have sufficient expertise and experience to perform the applicable functions.

Final § 250.842 requires that operators certify that all listed diagrams (including P&IDs) are correct and accessible to BSEE upon request, and that the required as-built diagrams outlined are submitted to the District Manager within 60 days after production commences.

In addition, final § 250.842(b)(3) includes a reference to the hazards analysis requirement of § 250.1911 and, as discussed in the proposed rule, imposes a requirement that the operator certify that it performed a hazard analysis during the design process in accordance with API RP 14J and that a hazards analysis program is in place to assess potential hazards during the operation of the platform.

Regulatory text changes from the proposed rule—Throughout this section, BSEE removed the word "BSEE" from before "District Manager." In addition, based on consideration of public comments, BSEE revised paragraphs (b)(2) and (d) to add "an appropriate" before "registered professional engineer." Paragraph (b)(3) was substantially revised to, among other things, clarify that the required hazards analysis must be performed in accordance with the existing SEMS hazards analysis requirement and with APR RP 14J. Paragraph (d) was revised to clarify that a registered PE must certify the as-built diagrams, outlined in paragraphs (a)(1) and (2), for the new or modified production safety system.

BSEE also made several minor, non-substantive edits to improve clarity and to use plain language.

Comments and responses—BSEE received public comments on this section and responds to the comments as follows:

BSEE Jurisdiction

Comment—A commenter raised questions about BSEE and USCG jurisdictional areas of responsibility over electrical systems.

Response—The comment was unclear. The requirements of § 250.842 address what information must be included in a production system safety application. These regulations apply only to operations and systems that are under the authority granted to the Department by OCSLA. More detailed discussion of BSEE's and USCG's jurisdiction is found in part IV.B.2 of this document.

Professional Engineers

Comment—One commenter suggested that the final rule should specifically require a U.S.-registered professional mechanical engineer to stamp all mechanical system designs, and require a U.S.-registered professional electrical engineer to stamp all electrical system designs.

Two commenters, however, suggested revising proposed § 250.842(b)(2) to allow chartered engineers or other non-U.S. engineers to design, review and approve mechanical and electrical systems because a large number of floating structures are engineered and built outside the U.S. The commenter asserted that the proposed wording could introduce significant legal issues when applied to modifications on existing facilities. The commenters recommended that BSEE revise paragraph (b)(2) to address these issues. Another commenter supported the proposed requirement that PEs be registered by a State or Territory, but requested that BSEE expressly state that the term "sufficient expertise and experience" for PEs includes experience with Arctic and harsh environments for systems used in the Arctic region.

Response—With regard to the first commenter's suggestions, BSEE agrees that proposed § 250.842(d) was potentially overbroad. Therefore, in the final rule, we have revised § 250.842 by inserting the words "an appropriate" before "registered professional engineer" to clarify BSEE's intention that the registered professional engineer be qualified in the particular discipline relevant to the certification, (*e.g.,* an electrical engineer to certify electrical system designs or a mechanical engineer to certify mechanical system designs).

With regard to the suggestions to allow non-U.S. registered engineers to perform tasks under paragraph (b)(2), no changes are necessary based on these comments. A reliable verification, with stamping, by a registered PE of the designs for the mechanical and electrical systems is important to BSEE's decisions regarding the suitability of a proposed production safety system, and BSEE has no way of verifying a registered PE stamp from a foreign country.

With respect to the commenter's assertions about existing facilities, this regulation is tailored to improve production process safety without unreasonably burdening the industry. In addition, although the commenter indicated that the proposed rule could create significant legal issues when applied to existing facilities, the commenter failed to specify what those legal issues might be, and it is not clear why application of this regulation to existing facilities would raise any significant legal issues. The relevant portion of proposed § 250.842(b)(2), to which this comment was directed, requires that the production safety system application include a certification that the mechanical and electrical systems designs were reviewed, approved, and stamped by an "appropriate" registered PE. Given the importance of the certifications required by final § 250.842(b), BSEE did not make any significant changes to this proposed regulation based on this commenter's suggestions.

BSEE did not revise paragraph (b)(2) to add language regarding experience with Arctic environments. BSEE intends that the requirement that an appropriate PE have "sufficient expertise and experience" will include experience with conditions where the operations will take place, including the Arctic environment for Arctic operations. As discussed earlier, BSEE may address specific Arctic-related issues in separate rulemakings, guidance or documents in the future.

Shut-in Tubing Pressure Changes

Comment—A commenter asserted that the requirement in proposed paragraph (a)(1), to include a schematic piping and instrumentation diagram in the operator's production safety system application, would add unwarranted burdens to keep such diagrams updated. To reduce the asserted burden, the commenter recommended deleting proposed paragraphs (a)(1)(i) and (a)(1)(iii) regarding well shut-in tubing pressure and pressure safety valve (PSV) set points, respectively. The commenter stated that shut-in tubing pressure and PSV set points change often, and thus would require resubmitting updated drawings to BSEE frequently. The commenter suggested that this reporting burden would not provide additional value.

Response—BSEE does not agree that the suggested change is necessary. BSEE does not expect operators to submit drawings every time the shut-in tubing pressures or PSV set points change, unless the production safety system changes as a result (*e.g.,* by installation or removal of equipment or safety devices). Operators will need to submit drawings to BSEE whenever they plan to modify the production process safety system, to make sure the system is acceptable and complies with the regulations. If an operator has any question as to whether a specific change would require resubmission of a process safety system application, the operator should contact the District Manager. As BSEE gains experience implementing this regulation, BSEE may provide additional guidance on when process safety system applications must be updated or resubmitted.

Piping Specification Breaks

Comment—One commenter noted that proposed § 250.842(a)(1)(ii) would have required that piping specification breaks be included on a schematic piping and instrumentation diagram, whereas BSEE District Engineers currently accept system pressure specification breaks, as opposed to individual "piping" specification breaks, for Safety Analysis Flow Diagrams (SAFDs). A commenter provided an example involving the compressor skid. According to the commenter, using piping specification breaks would yield a wide variety of breaks (*e.g.,* from inlet scrubbers to compressor suction and discharge bottles), while using system specification breaks would minimize the number of specification breaks that must be included in the diagram under paragraph (a)(1). The commenter implied that this would eliminate numerous unimportant details from the diagram and would simplify normalized operating systems, for a more robust analytical result.

Response—BSEE does not agree with the commenter's suggested change. The piping specification breaks provide BSEE with important information for its review of the schematics and diagrams to ensure that the safety system has been properly designed to account for changes in the piping design (*e.g.,* different pipe sizes resulting in pressure changes). The P&ID is a more detailed drawing than the SAFD. BSEE needs the individual pipe specification breaks to thoroughly analyze the system.

Safety Analysis Flow Diagrams

Comment—One commenter noted that, under proposed § 250.842(a)(1)(ii) and (a)(2), the Appendix E requirements of API RP 14C for the SAFD reflect the need for maximum pressures to be shown for pressure vessels, pipelines and heat exchangers. The commenter questioned whether, since this new requirement applies to piping and instrumentation diagrams, combining the two documents (*i.e.,* the P&ID and the SAFD) would be acceptable for submittal and approval. The commenter also asserted that all items listed in proposed § 250.842(a)(1) and (2) could be included on the combined document.

Response—BSEE does not agree with the commenter's suggestion for combining these two documents. The operator needs to submit both P&IDs and SAFDs. Industry already has standards in place for both documents and each document includes valuable information that is not found in the other. BSEE may consider a combined document in the future, as suggested, if industry establishes a standard process safety flow diagram that contains all of the information that BSEE otherwise would receive in P&IDs and SAFDs.

Maintaining Drawings

Comment—A commenter stated that he requirement in proposed paragraphs (a)(1) and (2) to maintain two sets of drawings would be burdensome and create opportunities for errors and omissions to occur. A commenter noted that the preamble of the proposed rule referred to the *Atlantis* investigation in justifying the new requirements for drawings; however, the commenter asserted that the recommendations in the *Atlantis* report did not identify a need for revisions to the drawing(s) requirements of existing subpart H and that those recommendations actually addressed issues covered in existing subpart I. The commenter recommended combining proposed paragraphs (a)(1) and (2) into a single requirement.

Response—BSEE does not agree with this suggestion. The importance of correct as-built documents and professional engineer stamps was highlighted in the *Atlantis* incident investigation report, prepared by BSEE's predecessor agency, the Bureau of Ocean Energy Management, Regulation and Enforcement in 2011.[22] The *Atlantis* report addressed the scope of the existing regulatory requirements related to engineering documents and hazard analyses, and pointed out the difficulties in identifying, organizing and tracking proper "as-built" drawings from other documents, such as "issued for design" or "issued for construction" drawings. At the time of the report, operators were not required to submit the engineering documents, including "as-built" diagrams referenced in hazard analysis documents.

Although the *Atlantis* report did not make specific recommendations for revisions to subpart H, several of the important issues identified in the report, including the need for operators to have a document management system to ensure accurate sets of drawings, are relevant to and addressed by this final rule. In particular, the issues discussed in the *Atlantis* report related to "as-built" P&IDs and to other diagram requirements are addressed by this section's requirements for:

- Stamping of engineering documents by a registered PE;
- Certification by the operator that all listed diagrams, including P&IDs, are correct and accessible to BSEE upon request; and
- Submittal of a certification to the District Manager, within 60 days after production begins, that the "as-built" diagrams, as described in final § 250.842(a)(1) and (2) are on file and have been stamped by an appropriate PE.

Potential Ignition Sources

Comment—A commenter recommended removing proposed paragraph (a)(3)(ii) from the final rule, asserting that the term "potential ignition sources" is ambiguous and that the value of the additional information is not apparent.

Response—BSEE disagrees. This information (*e.g.,* identification of areas where potential ignition sources are to be installed) is necessary to ensure that the operator identifies possible hazards and for BSEE to ensure that those hazards are identified, addressed, and mitigated. The final rule, as proposed, provides specific details on what the operator needs to include.

One-Line Electrical Drawings

Comment—One commenter asserted that the requirement in proposed paragraph (a)(3)(iii) for one-line electrical drawings for all electrical systems would be an expansion of existing requirements and requested that BSEE limit final paragraph (a)(3)(iii) to submittals for new facilities only.

Response—BSEE disagrees. Proposed and final § 250.842(a)(3)(iii) retains, and does not expand the scope of, the information required by existing § 250.802(e)(4)(ii), and operators are already complying with that longstanding requirement. This section of the final rule only moves the current requirements to a new section. BSEE did not propose, and has not made, any substantive revisions to the existing regulatory requirement.

Whether To Limit Requirement for Certain Schematics to New Facilities

Comment—A commenter recommended that BSEE limit the expanded requirement under proposed paragraph (a)(4) (schematics of fire and gas-detection systems) to submittals for new facilities only.

Response—BSEE disagrees with the requested limitation. This information is already required by existing § 250.802(e)(6), and this final rule simply moves that longstanding requirement to a new section, with no substantive changes. Operators are already complying with the existing requirement and BSEE sees no need or justification for limiting its scope to new facilities.

Definition of "Designs"

Comment—One commenter noted that proposed paragraph (b) would require "designs for the mechanical and electrical systems . . . [to be] reviewed, approved, and stamped by a registered professional engineer(s)." The commenter asserted that a vital component of the process safety system is the implementation of appropriate safety and control programming logic in either pneumatic panels or programmable logic controller (PLC) processors, much of which is carried out by equipment suppliers and/or programmers not directly supervised by registered engineers. The commenter recommended adding a definition for "designs" in the final rule.

Response—BSEE disagrees with that recommendation. Adding a definition of "designs" in this section is not necessary and would not substantially clarify the content of the regulation. The terms used in paragraph (b), including "designs," are well-established and commonly used in the affected industry, and have long been used in the existing regulations in the same context as they are used in this rulemaking.

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[22] *See* "BP's *Atlantis* Oil and Gas Production Platform: An Investigation of Allegations That Operations Personnel Did Not Have Access to Engineer-Approved Drawings" (March 4, 2011). A copy of this report is available online at: *https://www.bsee.gov/sites/bsee.gov/files/panel-investigation/incident-and-investigations/03-03-11-boemre-atlantis-report-final.pdf.*

Electronic PE Reviews

Comment—A commenter recommended rewording paragraph (b)(2) to allow for an electronic review by a PE in lieu of requiring that hard copies be stamped. The commenter asserted that the proposed wording of paragraph (b)(2) could also create significant ambiguity when applied to modifications on existing facilities. The commenter suggested that stamping and/or certification be limited to new systems/designs that are "to be installed."

Response—No changes are necessary. Electronic stamps of a registered PE are acceptable under this section, as long as they provide the same authentic verifiable information as a PE stamp applied to paper. For example, the electronic stamp could be a jpeg of the PE stamp, depending on what each state allows its registered engineers to do. Regarding the assertion of potential ambiguity if the PE review requirement is applied to modifications of existing equipment, the commenter failed to provide any support for that assertion, and BSEE is not aware of any ambiguity that warrants changing the applicability of this requirement to modifications to existing equipment in addition to installation of new equipment.

Independent Third-Parties

Comment—A commenter proposed that BSEE change proposed paragraph (b)(2) to require that the designs for the mechanical and electrical systems be reviewed, approved, and stamped by an independent third-party. The commenter suggested that independent third-party organizations have the multi-disciplinary knowledge to fully evaluate the safety of a complete production system and can demonstrate to regulators that they have comprehensive quality and work processes and training and qualification programs for their employees.

The commenter also asserted that, as BSEE moves to incorporate risk principles into its safety regime, DNV GL's Offshore Service Specification DSS–OSS–300, Risk Based Verification, may help BSEE and industry achieve their safety objectives. The commenter noted that, in general, verification based on risk is founded on the premise that the risk of failure can be assessed in relation to an acceptable risk level and that the verification process can be used to manage that risk, thus making the verification process a tool to maintain the risk below the acceptance limit. The commenter also suggested that verification based on risk helps to minimize additional work and cost, while maximizing risk management effectiveness.

Response—No changes are necessary. Paragraphs (b)(2) and (d) require certification that an appropriate registered PE has stamped the design documents, which is intended to implement one of the recommendations in the *Atlantis* report. Having a registered PE review, approve, and stamp those documents provides BSEE with an additional review tool to ensure the documents are correct and confirmed by someone with the experience and expertise to do so. BSEE is aware that some independent third-parties may lack the same relevant experience and expertise that an appropriate registered PE possesses. For example, BSEE is aware that some engineering firms may allow engineers who are not registered PEs to perform design reviews and use the firm's stamp; therefore, BSEE does not agree at this time that use of an engineering firm to perform those tasks would provide the same level of verifiable assurance that the reviews of these critical systems have been conducted by appropriately qualified engineers. However, BSEE intends to monitor and evaluate implementation of this requirement and may consider, based on that experience, whether an alternative review process, such as use of independent third-parties, should be provided under this regulation. In the meantime, if an operator believes that an alternative review and verification process would be at least as effective as the regulatory requirement, it can request BSEE's approval of such an alternative under § 250.141 on a case-by-case basis.

As to the commenter's second suggestion, the requirements in paragraph (b)(2) represent a practical and effective means of verifying that the mechanical and electrical systems have been designed properly to perform their critical functions in a manner similar to the longstanding requirement under existing § 250.802(e)(5). Thus, BSEE does not agree with the commenter's suggestion that the approach taken by this final regulation may cost too much or fails to manage risks appropriately. BSEE also does not agree that the commenter's suggested "risk-based" approach would minimize costs and maximize risk management. However, BSEE is continually evaluating risk-based methods to improve safety and environmental protection, and BSEE may consider at a later date whether an alternative risk-based approach to system design verification is warranted.

Classification Societies and Certification Authorities

Comment—A commenter requested, for purposes of proposed paragraph (b)(2), that BSEE accept the review and approval by a classification society of the mechanical and electrical systems as equivalent to the review, approval and stamping of systems designs by a registered PE. The commenter based this request on BSEE's existing regulations at § 250.905(k), which provide for review, approval and certification by a "classification society" as an alternative to the same functions performed by a registered PE under that section. The commenter asserted that the USCG also recognizes review and approval by classification societies as equivalent to the certification by a registered professional engineer. A second commenter made similar statements and requested that BSEE revise this section to allow "certification authorities," in lieu of registered PEs, to review, approve and stamp mechanical and electrical system designs. The commenter provided no examples or criteria for identifying any certification authorities.

Response—No changes are necessary. A classification society or a "certification authority" could be used by an operator to review and approve the relevant design documents as long as the classification society or certification authority provides a qualified, registered PE to review, approve, and stamp the documents. However, for the same reasons discussed in response to the preceding comment (regarding independent third-parties), BSEE does not have reason to believe at this time that review and approval by a classification society or certification authority, without use of an appropriate registered PE, would provide the necessary level of confidence that the mechanical and electrical systems are properly designed to perform their critical roles in the production process safety system. However, if an operator believes that an alternative review and verification process involving a classification society or certification authority would be at least as effective as the regulatory requirement for use of a registered PE, it may request BSEE's approval of such an alternate procedure on a case-by-case basis under § 250.141.

Applicability of PE Review and Approval

Comment—A commenter suggested that proposed paragraph (b)(2) should be revised to clarify whether these provisions apply to all electrical and mechanical systems or just to those related to safety systems. The commenter also suggested that the final rule should make provisions for monogrammed mechanical and electrical systems or equipment.

Response—BSEE does not agree that the suggested changes are necessary. Paragraph (b)(2), as proposed, clearly applies to all mechanical or electrical systems that are included in the operator's production safety system application for approval. Monograms are not a substitute for PE review and verification because monograms only represent that the system was in compliance with the standard at the time of manufacture; they do not provide any information about any post-manufacture changes made to the system. BSEE needs to verify, however, that the drawings are accurate for the systems and equipment that are actually installed on the facility. Thus, final paragraphs (b)(2) and (d) require certification that a registered PE stamped the actual documents.

Comment—A commenter asserted that the hazards analysis specified by proposed paragraph (b)(3) would require more detail than a similar requirement for the operator's SEMS program. The commenter suggested that BSEE clarify how paragraph (b)(3) and the SEMS hazards analysis requirements complement or differ from each other, with the ultimate goal of establishing one standard for hazards analysis.

Another commenter asserted that the placement of the hazards analysis requirement in § 250.482(b)(3) is confusing given that hazards analyses are covered by the subpart S (SEMS) regulations, API RP 75, and API RP 14J, and suggested that any alterations to hazards analysis requirements should be made through revision of subpart S or the industry standards. The commenter also asserted that the reference to "during the design process" in proposed paragraph (b)(3) is vague and potentially confusing with respect to whether it is referring to the original design process or to the design process of a modification. The commenter recommended removing "the "design process" from the final rule. The commenter also recommended that BSEE delete paragraph (b)(3) entirely or revise paragraph (b)(3) to read: "You must certify that a hazard analysis was performed in accordance with subpart S and API RP 14J (incorporated by reference as specified in § 250.198), and that you have a hazards analysis program in place to assess potential hazards during the operation of the platform."

Response—BSEE agrees, in part, with these comments and has revised final paragraph (b)(3) to state that the operator must certify that its hazards analysis was performed in accordance with § 250.1911 and API RP 14J, and to clarify that the operator must have a hazards analysis program in place to assess potential hazards during the operation of the facility. BSEE also deleted the proposed requirement to perform the analysis "during the design process." These revisions clarify that the hazards analysis required by this paragraph must satisfy the SEMS requirement, with respect to the relevant safety systems, as well as the more specific analysis required by API RP 14J. This will result in hazards analyses under subpart H that are consistent with the subpart S requirements, but that likely will provide more specific details regarding the relevant safety systems than subpart S alone might require.

Certification of Mechanical and Electrical Systems Installations

Comment—A commenter recommended that BSEE allow certification of mechanical and electrical systems installation through other means than a letter from the operator.

Response—No changes are necessary. Final § 250.842(d) calls for the operator to submit a letter certifying the accuracy of the as-built drawings. The letter provides documentation to assist BSEE in verifying that the drawings are consistent with the mechanical and electrical systems. Within 60 days of first production, the operator must submit updated as-built drawings along with a certification that a PE reviewed and stamped these drawings. These written documents will help BSEE ensure that the system was built according to the original plan submitted to BSEE. However, an operator may submit the certification letter electronically, if it chooses, or through BSEE's e-facility safety system permitting system.

Notification of Safety System Testing

Comment—A commenter suggested that BSEE revise proposed § 250.842(c) to clarify the type of approval or acknowledgement that the District Manager will issue following submission of the required documents. The commenter also suggested that BSEE revise proposed paragraph (c) by adding a requirement that a separate notification be submitted to the District Manager, as required by § 250.880, at least 72 hours before commencing production safety system testing.

Response—In response to the first comment, paragraph (c) only requires that the operator notify BSEE that the mechanical and electrical systems were installed in accordance with the designs previously approved by the PE; there is no BSEE approval or response required under paragraph (c).

Regarding the second comment, BSEE is not adding a reference to the production system testing notice required by § 250.880(a)(1) to § 250.842(c) as suggested. Section 250.842(c) deals with the certification required to be submitted prior to production, while the production safety system testing notification required by final § 250.880 may and generally will take place after production begins. Referring to the testing notification requirement from § 250.880 in § 250.842 is unnecessary and potentially confusing.

Certification of As-Built P&ID

Comment—A commenter asserted that certification of as-built P&ID under proposed paragraph (d) would be more appropriately done by a CVA surveyor than by a registered PE. The commenter also asserted that the proposed rule does not address the issues in the *Atlantis* report.

Response—No changes are necessary. As previously discussed, this rule addresses a number of the recommendations discussed in the *Atlantis* report (which, among other issues, evaluated complaints about the operator's access to certain engineering documents), and applies them in the context of production operations under subpart H. In particular, § 250.842(d) requires operators to provide as-built diagrams to BSEE and that operators certify that all listed diagrams, including P&IDs, are correct and accessible. The rule also addresses other issues identified in the *Atlantis* report by requiring a specific stamp by a PE on both the designs and the as-built diagrams, verifying their correctness, and by requiring the operator to certify that the equipment was installed in accordance with the approved designs. These measures provide BSEE with additional verification that the equipment on the facility was designed, built, and installed properly. Similarly, since some piping may be changed during construction, due to the actual layout, once the facility is fabricated and production begins, § 250.842(d) requires operators to submit the as-built drawings to ensure that any changes are documented.

Comment—One commenter asserted that the requirement in proposed § 250.842(d) for certification by an operator, within 60 days after production begins, that the as-built P&IDs and SAFDs have been certified correct and stamped by a registered PE would conflict with the engineering laws of many States. The commenter stated that engineers may only seal documents which they have verified as being correct and, thus, cannot legally certify as-built drawings because such certification would imply that all of the construction satisfies the applicable codes and standards. The commenter asserted that this further implies that the certifying engineer must be in charge of all of the construction quality assurance/quality control activities that verify compliance with construction codes and standards.

Response—BSEE does not agree that this comment warrants any changes and is not aware of any specific conflicts between these regulations and any State law. However, if any operator believes there is any potential conflict the operator should notify the District Manager so BSEE can review the situation and respond appropriately on a case-by-case basis. In the event an actual or potential conflict arises, the operator could also seek approval for an alternative process or a departure under §§ 250.141 and 250.142, respectively.

As-Built P&ID Timeframe and Field Verification

Comment—A commenter recommended that all references to "piping and instrument diagrams" be replaced with references to "process safety flow diagrams." The same commenter asserted that 60 days is not sufficient to validate the drawings as correct, certify the drawings as correct, and submit the as-built diagrams and the certification to the bureau. The commenter recommended that BSEE revise paragraph (d) to require the operator to provide BSEE with a copy of the as-built P&IDs within 180 days after production begins.

Another commenter stated that it did not understand the need for the rule to state that all approvals are subject to field verification. The commenter asserted that such verification is a standard practice with any inspection and enforcement process. That commenter and another commenter recommended that BSEE revise paragraph (f) to remove the requirement for field verification of all approvals of design and installation features.

Response—No changes are necessary. P&IDs, SAFDs, and SAFE charts are required, as provided in paragraph (a), before BSEE will approve the safety system. After the platform is producing, BSEE requires the operator to submit these documents again to ensure that any minor changes made during the construction phase are captured. The 60-day timeframe in paragraph (e) for submitting the as-built diagrams to BSEE is sufficient for that purpose; since the facility is built before production begins, the operator will have more than the 60 days after production begins to make these corrections and have the drawings certified. BSEE needs these documents for inspection purposes. The original drawings are used during pre-production, while the as-built drawings are necessary for any BSEE inspection conducted after the platform is on-line and to notify the operator if there are any concerns with the as-built diagrams. The P&IDs are a critical element of this final rulemaking and industry standards (such as API RP 14C, API RP 14J, and API RP 14F) and are separate and distinct from SAFDs.

In addition, removing the sentence pertaining to field verifications from paragraph (f), as suggested by the commenters, would serve no useful purpose, since the regulation also provides that those documents must be made available to BSEE upon request and since, as with all similar documents, the P&IDs and SAFDs are subject to field verification by BSEE during the inspection process.

As-Built Diagrams

Comment—A commenter asserted that paragraphs (d) and (e) might conflict with some State requirements under which construction issued documents are sealed while as-built documents are not. The commenter also stated that State requirements also require that the "sealing engineer" be the responsible engineer in charge of the design phase.

Response—No changes are necessary. BSEE does not regulate how operators create the diagrams. As previously explained, BSEE needs to ensure that the diagrams are properly reviewed by qualified PEs and that they meet the standards incorporated in this section. This regulation does not require PEs to be involved in anything that they are not already authorized to do. In the event an actual or potential conflict between this rule and any applicable State law arises, however, the operator should contact the District Manager for guidance. The operator may also seek approval for an alternate process or a departure under §§ 250.141 and 250.142, respectively, on a case-by-case basis.

Paperwork Burden and As-Built Diagrams

Comment—A commenter asserted that proposed paragraph (e) of this section would create a new requirement (to submit as-built P&IDs and SAFDs to BSEE within 60 days after production commences) and that the commenter did not understand the purpose of that requirement. The commenter noted that BSEE will have the original design diagrams as part of the application process, and that BSEE will also receive a certification that the installation was done in accordance with the approved diagrams. The commenter asserted that this requirement creates an undue paperwork burden on both the company and the bureau and added that BSEE had severely underestimated the costs for maintaining the "as-built" drawings for the life of the facility (as required by paragraph (f)). The commenter recommended that this requirement be deleted.

Response—BSEE disagrees with these comments. As previously explained, BSEE must have up to date as-built diagrams, which accurately reflect the actual systems in place, for review and inspection purposes, including providing notification to the operator of any BSEE concerns about differences between the original approved diagrams and the as-built diagrams. Modifications are often made to systems during construction or during initial operations, potentially rendering the approved drawings that accompanied the application obsolete. If no changes are made to the system after approval, however, an operator should be able to submit the same drawings that were originally stamped by the PE at little or no extra cost. BSEE's estimates for determining the costs and burdens related to as-built diagrams were based upon BSEE's best professional judgment.

Applicability to Existing Facilities

Comment—A commenter noted that proposed paragraph (f) requires that as-built P&IDs be maintained for the life of the facility. The commenter asserted, however, that the proposed rule did not specify whether paragraph (f) applies only to facilities installed/approved after publication of the final rule or whether it also applies to existing facilities. The commenter suggested that the rule and the related information collection approval should clearly state that paragraph (f) applies only to facilities installed and approved after publication of the final rule. The commenter asserted that the costs and information collection burdens would be considerable if as-built diagrams are required for existing facilities.

Response—No changes are necessary. The requirement for as-built diagrams will apply to all production facilities installed or modified after the effective date of the final rule. All safety system submittals made after the effective date of the final rule must comply with the requirements of final paragraphs (a) through (e). All production safety system design and installation documents approved under this section will need to be maintained and readily available as required by paragraph (f).

Production System Requirements—General (§ 250.850)

Section summary—The final rule moves the contents of existing § 250.803 into a number of new sections (final §§ 250.850 through 250.872). The provisions of existing § 250.803 were rewritten and reorganized in the new sections to improve readability by making each section shorter and focused on a specific issue. In particular, the contents of existing § 250.803(a) have been moved to final § 250.850, which establishes general requirements for production safety systems, including requiring operators to comply with API RP 14C.

Regulatory text changes from the proposed rule—BSEE did not make any significant changes to this section. BSEE slightly revised the reference to API RP 14C to clarify that operators must also comply with the production safety system requirements of that standard.

Comments and responses—BSEE did not receive any comments on this section.

Pressure Vessels (Including Heat Exchangers) and Fired Vessels (§ 250.851)

Section summary—The contents of existing § 250.803(b)(1), establishing requirements for pressure vessels (including heat exchangers) and fired vessels, have been moved to final § 250.851. A table in paragraph (a) establishes basic requirements for production systems; paragraph (b) addresses operating pressure ranges; and paragraph (c) addresses pressure shut-in sensor settings.

Regulatory text changes from the proposed rule—The text of this section has been revised for clarity and plain language, and language has been added for completeness (*e.g.,* approval of uncoded vessels and operating pressure changes). Paragraph (a) has been revised to conform better to the MOA–OCS–04 between BSEE and the USCG, the referenced industry standards, and existing regulations, and to respond to comments received. The final rule clarifies that paragraph (a) of this section applies to pressure vessels and fired vessels that support production operations. In final paragraph (a), BSEE removed provisions from the proposed rule that related to existing pressure and fired vessels with operating pressures of less than 15 psig. In final paragraph (a)(2), BSEE provided a period of time (540 days from publication of the final rule) after which BSEE approval is required for continued use of certain uncoded pressure and fired vessels. In final paragraph (a)(3), BSEE added an exception for pressure vessels where staggered set pressures are required for configurations using multiple relief valves or redundant valves installed and designated for operator use only.

BSEE also revised final paragraph (b), based on comments received, to clarify the requirements for the establishment of new operating pressure ranges. This includes clarifying that the operator must establish the new operating pressure range after the system pressure has stabilized, and that pressure recording devices must document the pressure range over time intervals that are no less than 4 hours and no longer than 30 days.

Paragraph (c) was revised to include clarification that initial set points for pressure shut-in sensors must be set utilizing gauge readings and engineering design.

Comments and responses—BSEE received public comments on this section and responds to those comments as follows:

Tank Design and Operation

Comment—One commenter asserted that the regulations should be revised to state that these sections are not applicable to the design or operation of tanks inside the hull of a floating facility, as USCG requirements for tanks inside the hull of a unit may differ from BSEE requirements. Alternatively, the commenter suggested that the MOA should be revised to give USCG jurisdiction over the design of tanks that are integral to the hull and to give BSEE jurisdiction over non-integral tanks in the hull and over the operation of both integral and non-integral tanks in the hull of the unit that are for produced hydrocarbons, fuel and flow assurance fluids.

Response—The commenter is referring to tanks in the hull of a floating facility. BSEE agrees that the USCG has jurisdiction over the design and operation of tanks in the hull. However, under MOA OCS–04, BSEE has responsibility for regulation of the level safety systems on all product storage tanks, including those in the hull of a floating facility. These tanks are upstream of the production meters. BSEE does not regulate the tank design or how the operator loads the product. However, BSEE needs to ensure there is a safety system in place to ensure the tanks do not overflow. To clarify this issue, BSEE revised paragraph (a) in the final rule by deleting the proposed requirements for tanks with operating pressures less than 15 psig and by adding a specific reference to pressure vessels and fired vessels that are used to support production operations. Further discussion of BSEE's jurisdiction is found in part IV.B.2 of this document.

Pressure Vessels

Comment—One commenter noted that USCG has its own regulations regarding pressure vessels utilized in emergency and ship service systems for floating platforms. The commenter suggested that, for floating facilities, BSEE should state that the proposed regulations do not apply to pressure vessels, waste heat recovery, water heaters, piping or machinery that are associated with the unit's emergency and ship-service systems.

Response—As previously stated, this final rule applies only to operations that are under BSEE authority. Nonetheless, BSEE has revised final paragraph (a) to better delineate the scope of these provisions in relation to BSEE's authority.

Pressure Monitoring

Comment—A commenter questioned the need for continual monitoring in order to observe when the real time system pressure changes by 5 percent. The commenter asserted that most platforms are not equipped with a supervisory control and data acquisition/PLC (SCADA/PLC) type real-time monitoring system that could be programed to monitor and alarm a 5 percent change in operating pressure, although pressure safety high (PSH) and pressure safety low (PSL) safety devices constantly monitor pressure variables and are set to properly respond to an automatic detection of an abnormal condition. The commenter asserted that existing BSEE regulations allow the setting of PSHLs at 15 percent above/below the highest/lowest operating ranges in the production process and that installing equipment to monitor for a change of 5 percent would render the PSHLs redundant. The commenter stated that, currently, whenever PSHLs automatically detect abnormal conditions, the operating range at that time is evaluated to learn if a new range needs to be established. The commenter also asserted that the proposed rule did not offer a timeframe for establishing a new pressure range, and that such a timeframe should account for weather, schedules and other factors. The commenter expressed concern that the proposed requirement could result in nuisance shut-ins.

Response—BSEE does not agree with the suggestion that operators would need to acquire new real-time monitoring capabilities in order to implement the requirements of this provision. Section 250.851(b) does not require continuous real-time monitoring of pressure range; it only requires the use of pressure recording devices to establish new operating pressure ranges when an observed pressure change exceeds the limits specified in the rule. BSEE expects that operators are already using equipment that measures pressure changes in accordance with the existing regulations and industry standards and that is capable of being used under final § 250.851.

This provision does not preclude operators from setting new operating ranges based on a more conservative approach; that is, avoiding potentially unnecessary shut-ins by setting new pressure ranges when normalized system pressure changes by less than 50 psig or 5 percent. In addition, BSEE has clarified the final rule's requirements for resetting the pressure range, by adding language providing that once system pressure has stabilized, the operator must use pressure recording devices to establish the new operating pressure ranges. The final rule also specifies that the time interval for documenting the pressure range must be no shorter than 4 hours and no longer than 30 days. BSEE added the minimum time provision to ensure that the system pressure is stable before setting the operating ranges. In addition, the time period limitations were set, in part, because pressure spikes and/or surges may not be discernible in a range chart if the run time is too long. These revisions should also alleviate the commenter's concern regarding potential nuisance shut-ins.

Consistency With ASME Codes

Comment—A commenter stated that portions of proposed paragraph (a) were inconsistent with ASME's Boiler and Pressure Vessel Code and recommended revising the proposed rule to align with established codes. The commenter recommended specific language for revising proposed paragraphs (a)(1) and (a)(4).

Response—BSEE has revised this section in the final rule, as previously described, and the language the commenter suggested revising is no longer in the regulatory text.

Redundant Relief Valves

Comment—One commenter stated that, while this proposal attempts to account for the need to stagger relief valve set pressures, it could potentially create an unsafe condition, depending on the meaning of the term "completely redundant relief valve" in the proposed rule. The commenter noted that some equipment can have multiple causes for high pressure, each of which may produce different amounts of vapor that need to be relieved through the relief valve(s), and that it is not uncommon for some equipment to need multiple relief valves to meet various contingencies, while other equipment may only need a single relief valve. The commenter stated that making all the set pressures the same could lead to "relief valve chatter" (*i.e.,* the rapid opening and closing of the relief valve), with effects ranging from valve seal damage to valve or piping failure. The commenter suggested, in the case of a completely redundant or spare relief valve, that the set pressure should be the same as the valve it replaces and that the spare relief valve should be fitted with an inlet block valve. The commenter also suggested that if the primary relief valve needs to be isolated or removed, the spare relief valve/inlet block valve should be opened and the primary relief valve/inlet block valve closed for continuous protection. For those reasons, the commenter provided recommended revised language to provide for exceptions where staggered set pressures are required for configurations using multiple relief valves or redundant valves installed and designated for operator use only.

Response—BSEE agrees with the commenter's reasoning for revising the exceptions language in proposed paragraph (a)(3) and has added the language suggested by the commenter as final paragraph (a)(3)(ii). The exceptions include cases where staggered set pressures are required for configurations using multiple relief valves or redundant valves installed and designated for operator use only.

Operating Ranges

Comment—A commenter asserted that most operators do not monitor the operating ranges to see if pressures fluctuate by 5 percent, since such fluctuations do not typically indicate a change in the maximum operating pressure. The commenter opined that current industry practices for ensuring that pressures are below the maximum operating pressure are sufficient. To implement the proposed new requirement, the commenter asserted, industry would need to institute new field protocols, requiring additional resources, which would provide uncertain value. The commenter recommended revising the proposed provision to require establishment of new pressure ranges when the normal system pressure changes by the greater of 15 percent or 5 pounds per square inch (psi).

Response—BSEE revised paragraph (b) of this section to be consistent with similar requirements in other sections of the final rule (*e.g.,* final § 250.852), which also require the operator to establish new operating pressure ranges when the operating pressure changes by a specified threshold amount or percentage. BSEE disagrees with the commenter's suggestion for revising the proposed threshold for establishing new pressure ranges under this section. BSEE has determined that a 5 percent change in normalized system pressure is an appropriate threshold for requiring establishment of a new operating pressure range, since that threshold will help minimize nuisance shut-ins and provide operators with reasonable advance notice of potentially abnormal pressure changes that could pose safety or environmental risks. By using a 5 percent threshold, it is likely that operators will establish new operating pressure ranges more frequently than they would under a higher threshold (such as that suggested by the commenter). This should lead to fewer shut-ins that are due to pressure fluctuations that do not actually reflect a dangerous condition, but that would be above or below the pressure range that would have existed if it had not been reset under this provision. Conversely, the 5 percent threshold will provide operators with earlier warnings of potentially abnormal conditions, which could indicate an actual developing problem, and provide additional time and opportunity for the operator to take any appropriate steps to prevent a safety or environmental incident from occurring. The commenter's suggested threshold, by contrast, would not provide such opportunities, and therefore would not achieve the purposes of this provision.

For the same reasons (*i.e.,* minimization of nuisance shut-ins and early warning of potentially dangerous abnormalities), BSEE disagrees with the commenter's suggestion that the 5 percent threshold would not provide any value. In addition, to help clarify the requirements for establishing a new pressure range, BSEE added language to § 250.851(b) requiring that, after system pressure has stabilized, the operator use pressure recording devices to establish the new operating pressure ranges, and that the pressure range must be documented over time intervals that are no less than 4 hours and no more than 30 days long. This clarification will help minimize this commenter's concern that the 5 percent threshold will require new field protocols. In addition, contrary to the commenter's suggestion, setting sensors to monitor for a 5 percent change in pressure is not a new concept, since API RP 14 C, which is incorporated by reference in several sections of this final rule, already specifies that PSHL sensors be set with a pressure tolerance of 5 percent.

PSL Settings

Comment—A commenter noted that the proposed rule would require approval from the District Manager for activation limits on pressure vessels that have a PSL sensor set less than 5 psi, although some pressure vessels currently operate below 5 psi. The commenter suggested that BSEE delete this requirement because it would create an unnecessary administrative burden.

Response—BSEE did not make any significant changes to the final rule. Setting the PSL sensor below 5 psig requires approval from the District Manager because, in BSEE's experience, pneumatic-type sensors are generally less accurate when pressure is below 5 psig. While the commenter asserts that the requirement would create an unnecessary administrative burden, the commenter did not provide any further information about this asserted burden. If the commenter was referring to burdens on BSEE's District Managers, BSEE does not agree that any such burden would be unnecessary or unwarranted given BSEE's need to ensure that pressure vessels are operating safely. If the commenter was referring to an administrative burden on operators, the commenter did not provide any estimate of that burden.

Flowlines/Headers (§ 250.852)

Section summary—The final rule moves the content of existing § 250.803(b)(2), which establishes requirements for flowlines and headers, to final § 250.852. The existing regulations require the establishment of new operating pressure ranges at any time a "significant" change in operating pressures occurs. The final rule specifies instead that the operator needs to set new operating pressure ranges for flowlines any time the normalized system pressure changes by 50 psig or 5 percent, whichever is greater. The final rule also specifies relevant timing and procedures. BSEE also added requirements for wells that flow directly to a pipeline without prior separation and for the closing of SSVs by safety sensors, as well as requirements for choking devices, and for the use of single valves and sensors to protect multiple subsea pipelines or wells that tie into a single pipeline riser.

Regulatory text changes from the proposed rule—Proposed paragraph (a)(2) was revised in the final rule to clarify the requirements for establishing new operating pressure ranges in response to comments on similar provisions in proposed § 250.851 and other sections. Final paragraph (b) was revised to clarify that initial set points for pressure sensors must be set using gauge readings and engineering design. In final paragraph (c)(1), the word "liquid" was removed after the phrase "maximum-anticipated flow of" so as not to improperly limit the scope of the requirement.

Comments and responses—BSEE received public comments on this section and responds to those comments as follows:

Nuisance Shut-Ins

Comment—A commenter asserted, as an example, that under the proposed regulations, a flowline that has a normalized operating range of 50 psig would have a PSH setting of 57 psig and a PSL setting of 43 psig. The commenter then explained that if the operating range normally changes to 40 psig, due to a naturally depleting well, the PSL will actuate and shut-in the well unnecessarily. The commenter also asserted that the operator would not be able to establish a new pressure range since the change was not "50 psig or 5 percent, whichever is higher." Therefore, the well would remain shut-in until the range changed by the greater of 50 psig or 5 percent. Thus, the commenter concluded that the proposed regulation would not provide for normalized operating ranges that are below 1,000 psig (since 5 percent of 1,000 psig is 50 psig). The commenter also asserted that BSEE currently permits operators to establish new operating ranges at less than the proposed change requirements of 50 psig or 5 percent, whichever is greater," to help prevent nuisance shut-ins.

Response—As discussed in regard to similar comments on proposed § 250.851, operators may use a more conservative approach to help prevent nuisance shut-ins, by using a lower change in pressure than that specified in this section (*i.e.,* the greater of 50 psig or 5 percent) as a threshold for establishing a new operating pressure range. The thresholds established by §§ 250.851 and 250.852 represent pressure changes at which an operator must establish new operating pressure ranges; they do not preclude an operator from establishing new operating pressure ranges based on pressure changes below those thresholds. BSEE has added language to the final that states that once system pressure has stabilized, the operator must establish the new operating pressure ranges using pressure recording devices that document the pressure range during time intervals no less than 4 hours and no more than 30 days long.

Consistency With Subpart J

Comment—A commenter asserted that the proposed language conflicts with the current language in subpart J, and also with the recommended guidance in API RP 14C. The commenter recommended deleting the requirement for the PSV when the shut-in tubing pressure is greater than 1.5 times the maximum allowable working pressure (MAWP) of the pipeline or flowline. The commenter stated that, currently, with the two SSVs with independent PSHs, a safety integrity level (SIL) of 2 is achieved when both SSVs are required to hold bubble tight (zero leakage). The second SSV serves as an alternate safety device to prevent over pressurization of the pipeline.

Response—No changes are necessary, since this section covers only the safety systems on the pipeline, which are part of the production safety system. BSEE regulations do not address or rely on the SIL approach. Although BSEE does not agree that there is a conflict between API RP 14C, as referenced in this section of the final rule, and subpart J, if there is any conflict between any industry standard and any regulation in subparts H or J, operators must follow the regulations. In addition, if there is any conflict between the requirements of subparts J and H, operator must follow the more rigorous requirement, which generally will found in subpart H. . Although BSEE is not aware of a conflict between these final subpart H requirements, API 14C, and subpart J, BSEE will continue to monitor the implementation of both sets of requirements to ensure there are no conflicts. Further, if an operator believes there may be a conflict in a particular situation, the operator may contact the District Manager for advice.

Applicability to Subsea Installations

Comment—A commenter suggested revising the section title of proposed § 250.852 so that the section applies only to dry trees on floating facilities and expressly limiting this section to surface trees and dry well jumper flowlines to avoid confusion with subsea installation which requires different equipment.

Response—BSEE disagrees with the suggestions for revising the section title and for limiting this section to surface trees and dry well jumper flowlines. The requirements in this section apply to all dry trees, except for paragraph (e), which applies to dry trees on floating facilities, and paragraph (g), which applies to pipeline risers on floating production facilities. The requirements for other safety devices that are used for subsea installations are addressed in §§ 250.873 through 250.875 of the final rule. Thus, BSEE does not agree that the organization of the sections in the final rule is likely to cause any confusion as to requirements for dry trees and subsea installations.

Normal Variations in Operating Pressures

Comment—A commenter suggested revising the language of proposed § 250.852(a)(2), since slugging and other dynamic phenomenon that may be associated with normal flow can often cause the pressure to fluctuate by 5 percent or more. The commenter noted that normalized operating pressure may include variations that are associated with transient or dynamic conditions, such as gas surge from multi-phase slugging during normal operations. The commenter requested clarification as to the requirement to reestablish an operating pressure range when normalized operating pressure changes by 5 percent. The commenter also recommended modifying § 250.852(a)(2) to require pressure recording devices to be used to establish new operating pressure ranges for required flowline or header PSH/PSL sensors at any time the normalized operating pressure changes are outside the parameters of § 250.852(b)(1).

Response—As previously discussed, BSEE has determined that the 5 percent (or 50 psig, whichever is greater) threshold is appropriate because it will both help prevent nuisance shut-ins (through more frequent resetting of operating pressure ranges) and provide earlier warning of potentially dangerous conditions that may require action to prevent a safety or environmental incident. In addition, the 5 percent threshold is consistent with the 5 percent level pressure tolerance levels for PSHL sensors under API RP 14C. (However, if any operator believes that its operating pressures may change by more that 5 percent under normal flow conditions, and that it should use a different threshold for establishing a new pressure range, it may request approval for use of an alternate procedure under existing § 250.141.) As requested by the commenter, however, BSEE has clarified the revised final paragraph (a)(2) to provide additional clarity regarding the use of pressure recording devices to establish new operating pressure ranges.

Relief Valves

Comment—A commenter suggested revising the language of proposed § 250.852(c)(1) to allow for a relief valve which vents into the platform flare scrubber or some other location approved by the District Manager that is designed to handle, without liquid-hydrocarbon carry-over to the flare, the maximum anticipated flow of hydrocarbons that may be relieved to the vessel.

Response—BSEE agrees with this comment and has revised the final regulation, by removing the word "liquid" to ensure the flare scrubber is designed to handle the maximum anticipated flow of all hydrocarbons.

Qualification Tests

Comment—A commenter suggested revising the language in proposed § 250.852(e)(1) to allow designs to be verified through qualification tests since flexible design methodology is proprietary and the manufacturers will not release the design methodology to an independent verification agent (IVA).

Response—The suggested changes are not necessary. The design methodology is contained in API Spec. 17J, Specification for Unbonded Flexible Pipe, which has already been incorporated in existing § 250.803 for flowlines on floating platforms, and which is nearly identical to the requirements contained in final § 250.852(e)(1). The existing regulation, like this final rule, specifies the type of manufacturer documentation, such as design reports and IVA certificates, that operators must review. BSEE is not aware that the concern raised by the commenter has been a significant issue under the existing regulations.

Pipeline Risers

Comment—A commenter requested clarification on this section, asserting that the proposed requirements in paragraphs (g) and (h) were somewhat unclear since they first refer to a "single pipeline riser" on the platform and then refer to "each riser" on the platform.

Response—No changes are necessary. Both paragraphs (g) and (h) address situations involving multiple subsea sources (wells or pipelines) that tie into a single pipeline riser or multiple risers on a platform. If a single flow safety valve (FSV) on the platform to protect multiple subsea pipelines or wells that tie into a single pipeline riser, each riser may have its own FSV (as provided by paragraph (g)) and its own PSHL (as provided by paragraph (h)).

Safety Sensors (§ 250.853)

Section summary—The contents of existing § 250.803(b)(3), pertaining to safety sensors, have been moved to final § 250.853, and revised for clarity and to use plain language. This section requires that all shutdown devices, valves, and pressure sensors function in a manual reset mode; that sensors with integral automatic resets be equipped with appropriate devices to override the automatic reset mode; and that all pressure sensors be equipped to permit testing with an external pressure source.

Regulatory text changes from the proposed rule—BSEE deleted the proposed requirement that all level sensors on new vessel installations be equipped to permit testing through an external bridle.

Comments and responses—BSEE received public comments on this section and responds to those comments as follows:

Level Sensors on External Bridles

Comment—A commenter asserted that the proposed requirement, in paragraph (d), that level sensors be located on an external bridle (rather than directly on the vessel) is unnecessary, as long as a means of testing the sensor without a level bridle is available. The commenter stated that fouling or foaming services may cause external bridle sensors to misread levels in some services. The commenter added that certain sensor testing technologies (*e.g.,* ultrasonic and capacitance) are not suitable for use in external bridles, and that some proposed or new projects are evaluating using ultrasonic, optical, microwave, conductive, or capacitance sensors. However, the commenter asserted, that these sensors do not utilize bridles. The commenter requested that BSEE remove paragraph (d) from the new regulations or revise this section to allow for new sensor technology that does not utilize bridles.

Response—BSEE disagrees with the commenter. Sensor testing equipment built according to API standards, which are incorporated by reference into BSEE's regulations, should be able to meet this provision. Moreover, an operator that wants to use alternate technology that is incompatible with bridles can propose alternate approaches through the DWOP process or seek approval from BSEE under § 250.141. BSEE does not need to refer to those options in this section. However, BSEE has removed proposed paragraph (d) from the final rule because BSEE can address level sensors adequately using existing regulatory processes, such as the DWOP, and we do not need to specify uses and conditions of such sensors in this regulation.

Floating Production Units Equipped With Turrets and Turret-Mounted Systems (§ 250.854)

Section summary—Final § 250.854 establishes a new requirement for floating production units equipped with turrets and turret-mounted systems. The operator will be required to integrate the auto slew system with the safety system, such that the production processes automatically shut-in and release the buoy. Specifically, the safety system must immediately initiate a process system shut-in, in accordance with final §§ 250.838 and 250.839, and release a buoy to prevent a spill and damage to the subsea infrastructure when the auto slew mode is activated and there is a ship heading/position failure or the rotational limits of the clamped buoy are exceeded.

This new section will also require floating production units with swivel stack arrangements to be equipped with a leak detection system for the portion of the swivel stack containing hydrocarbons. The leak detection system will be required to be tied into the production process surface safety system allowing for automatic shut-in of the system.

Regulatory text changes from the proposed rule—BSEE did not make any significant changes to this section in the final rule.

Comments and responses—BSEE received public comments on this section and responds to those comments as follows:

Performance Standards for Leak Detection

Comment—A commenter acknowledged that leak detection requirements for floating productions units are an improvement, but asserted that BSEE should prohibit the use of floating production units for long-term production in the Arctic OCS.

Response—BSEE disagrees with prohibiting the use of floating production units for long-term production in the Arctic as this would prematurely, and potentially unnecessarily, limit long-term options for development in the Arctic. Moreover, an operator must demonstrate that any proposed production unit is suitable for its operating environment. Under final § 250.800(a), all oil and gas production safety equipment must be designed, installed, used, maintained, and tested to ensure the safety and protection of the human, marine, and coastal environments. Final § 250.800(a) also requires that, for production safety systems operated in subfreezing climates, the operator must account for floating ice, icing, and other extreme environmental conditions that may occur. In addition, as previously discussed, BSEE may address Arctic-specific issues in future rulemakings, guidance or other documents.

Riser Disconnects

Comment—A commenter stated that the mooring is designed to retain a vessel on location and protect the risers, which should be flushed and/or purged prior to disconnect during a planned process. The commenter then asserted that the proposed requirements in this section could reduce the safety of that system.

Response—BSEE does not agree with the suggestion that the requirements in this section could make the disconnect system less safe. However, BSEE recognizes that, for each floating production system with disconnectable turrets and a turret-mounted system, the system configuration and disconnect process will be unique. BSEE also understands that there are distinctions between an emergency disconnect and a planned disconnect, and that there are personnel safety concerns during any disconnect that the operator must address. Accordingly, BSEE will continue to evaluate the disconnect process on a case-by-case basis as part of the initial planning and review of a facility's plans and systems under a DWOP. In addition, as a condition of approval in the DWOP, BSEE may require the operator to demonstrate the disconnect system once per year.

Leak Detection

Comment—A commenter suggested revising the language of proposed § 250.854(b), asserting that, on many swivel stacks with leak detection systems, the rate of a hydrocarbon leak, not the detection of a hydrocarbon leak, is the criterion for an automatic shut-in.

Response—BSEE does not agree that the commenter's recommended changes are necessary. While BSEE agrees that the use of some type of system to detect and contain a leak is appropriate, a catastrophic failure must initiate a process system shut-in. However, a seal failure that causes a leak into the production system, which is contained, will not require an automatic shut-in. This provision protects against a scenario in which those internal seals have failed in such a way that a leak external to the production system (*i.e.*, a containment failure) occurs. This is an abnormal condition and, to protect safety and the environment, the system needs to automatically sense such a leak and shut-in.

Emergency Shutdown (ESD) System (§ 250.855)

Section summary—The contents of existing § 250.803(b)(4), pertaining to ESD systems, have been moved to final § 250.855. Existing § 250.803(b)(4) provides that only ESD stations at a boat landing may utilize a loop of breakable synthetic tubing in lieu of a valve. The final rule clarifies that the breakable loop in the ESD system is not required to be physically located on the boat landing; however, in all instances it must be accessible from a vessel adjacent to or attached to the facility. The final rule also requires that a schematic of the ESD, indicating the control functions of all safety devices for the platforms, must be kept on the platform, at the field office nearest the OCS facility, or at another location conveniently available to the District Manager for the life of the facility.[23] The final rule also introduces requirements for electronic ESD stations and ESD components.

Regulatory text changes from the proposed rule—BSEE revised paragraph (a) in the final rule to clarify requirements of the ESD stations, to ensure the stations function and are identified properly. BSEE also revised this paragraph to respond to comments and to better align the regulation with incorporated standards. As provided in section C.1 of API RP 14C, incorporated in this section, the final rule also requires that: the electric ESD stations be wired as "de-energize to trip" circuits or as supervised circuits; all ESD components be high quality and corrosion resistant; and ESD stations be uniquely identified. BSEE also clarified the proposed requirement that a breakable loop, if one is used, be accessible "from a boat;" the final regulation requires that the breakable loop must be accessible "from a vessel adjacent to or attached to the facility."

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[23] The purpose of the full ESD schematic is to enable BSEE to confirm the design. This detailed schematic is not the same as the safety equipment and layout drawing that indicates the locations of the ESD stations and that is submitted to BSEE with production system applications. BSEE expects that a copy of the safety equipment and layout drawing will continue to be retained on the floating production facility for potential use by first responders or others in an emergency.

Comments and responses—BSEE received one comment on this section and responds as follows:

ESD on Boat Landings

Comment—A commenter stated the proposed rule references only pneumatic-type valves, while current technology incorporates electronic switching devices. The commenter asserted that an ESD device on a boat landing can be either a breakable loop for pneumatic systems or a stiffen ring on an electronic switch that can be actuated using a boat hook.

Response—BSEE agrees with the commenter's observation that the proposed rule was limited to pneumatic-type valves and did not address the boat landing ESD. In the final rule, BSEE has revised this section to better reflect relevant language in the incorporated API RP 14C (section C.1) and to require that the ESD stations be uniquely identified. Because it is critical that the ESD stations be clearly recognizable and functional during an emergency, BSEE wants to emphasize this requirement.

Engines (§ 250.856)

Section summary—The requirements in existing § 250.803(b)(5), pertaining to engine exhaust and diesel engine air intake and shutdown devices, have been moved to final § 250.856 and rewritten for clarity and plain language. BSEE also clarified this section of the final rule by listing the types of diesel engines that do not require a shutdown device .

Regulatory text changes from the proposed rule—BSEE added the parenthetical "(*i.e.*, overspeed)" after the word "runaway" in final paragraph (b) to clarify what is meant by a runaway, since the term "overspeed" is commonly used and understood in the marine industry.

Comments and responses—BSEE received public comments on this section and responds to those comments as follows:

Mechanical Air Intake Device

Comment—A commenter stated that diesel engines usually have an overspeed device that will shut down the run-away engines except when a firewater pump and emergency generator is started due to an emergency shutdown or confined entry air supply. The commenter then asked whether this section would require use of a mechanical air intake device in addition to the overspeed sensor.

Response—Overspeed sensors are always required,. In addition, under final § 250.856, the operator must equip diesel engine air intakes with a device to shutdown the engine in the event of a runaway (*i.e.*, overspeed), except for certain identified categories of diesel engines. The final rule also requires that diesel engines that are continuously attended be equipped with either remotely-operated manual or automatic shutdown devices and that diesel engines that are not continuously attended be equipped with automatic shutdown devices.

Jurisdiction

Comment—A commenter recommended that paragraph (b) of this section be limited to fixed platforms only. According to the commenter, under item 12 of MOA OCS–04 between the Minerals Management Service (MMS) (now BSEE) and the USCG, firefighting safety equipment and systems on floating offshore facilities are under the responsibility of the USCG, as are requirements for emergency power sources on floating offshore facilities.

Response—As previously explained, these regulations only apply to operations that are under BSEE authority. In addition, paragraph (b) is essentially a recodification of longstanding BSEE regulations, under which the commenter's jurisdictional questions have not proven to be an issue.

Glycol Dehydration Units (§ 250.857)

Section summary—The final rule moves the contents of existing § 250.803(b)(6), pertaining to safe operations of glycol dehydration units, to final § 250.857. The final rule adds new requirements for FSVs and shutdown valves (SDVs) on the glycol dehydration unit.

Regulatory text changes from the proposed rule—BSEE did not make any significant changes to this section.

Comments and responses—BSEE received public comments on this section and responds to those comments as follows:

Venting the Glycol Regenerator

Comment—One commenter noted that the proposed regulations require the installation of a pressure relief valve on the glycol regenerator (reboiler) to prevent over-pressurization, and require that valve to be vented in a non-hazardous manner. The commenter suggested that the regulation should provide specific instructions on how the operator can vent the glycol regenerator in a non-hazardous manner. The commenter also noted that BSEE requested additional comments on opportunities to limit emissions from OCS production equipment. The commenter recommended that BSEE require emission control systems to be installed on OCS glycol dehydration units or require the use of desiccant dehydrators (where technically feasible). The commenter also recommended that the regulations be revised to require OCS operators to install flash tank separators, optimize the glycol circulation rate, and reroute the skimmer gas.

Response—The provision of the final rule requiring that the relief valve discharge must be vented in a non-hazardous manner is a recodification of longstanding BSEE regulations. The commenter is asking instead for a prescriptive requirement on how the operator should vent the glycol regenerator in a non-hazardous manner. There are many ways this can be accomplished. The commenter itself described three different approaches to achieving this. However, BSEE does not want to limit the options to just a few approaches; rather, the final rule sets a performance goal and allows the operator to decide the best approach to achieve the required goal. This performance-based approach, involving the same standards, has worked under the existing regulation.

BSEE appreciates the commenter's recommendations regarding emissions controls and will consider them. BSEE may also consider additional measures, such as emission control systems, in the future to ensure safety and protect the environment; however, those measures are outside the scope of this rulemaking.

Safety Devices

Comment—One commenter stated that the proposed rule listed some, although not all, safety devices for equipment specified in API RP 14C, which allows operators to rebut the need for some safety devices according to safety analysis checklists The commenter asserted that the requirements in this proposed regulation may restrict that option. The commenter suggested deleting these requirements and referencing the requirements in API RP 14C, as in proposed § 250.865(a). The commenter also suggested that the requirement in proposed § 250.857(c) regarding installation of the SDV should be required only for new designs or modifications to glycol dehydration units.

Response—No changes to the final rule are necessary. Requiring two valves on the glycol dehydration units, as proposed, helps ensure safety of the operations. The requirements of this section are in addition to API RP 14C, which requires a shutdown valve, but does not specify the location of the shutdown valve. The final rule requires that the shutdown valve be installed as near as practical to the glycol tower, to ensure safety and protect the environment. Placing the shutdown valve closer to the glycol tower reduces the amount of product that may be released to the environment in the event of damage to the system.

Gas Compressors (§ 250.858)

Section summary—BSEE moved the contents of existing § 250.803(b)(7), pertaining to gas compressor operations, to final § 250.858. BSEE also revised those provisions for clarity and plain language. Final paragraph (a) establishes certain equipment requirements consistent with API RP 14C for gas compressors. Paragraph (b) requires the use of pressure recording devices to establish a new operating pressure range after an operating pressure change greater than 5 percent or 50 psig, whichever is higher. Final paragraph (c) contains a table of pressure sensor shut-in settings.

Regulatory text changes from the proposed rule—Based on comments received, BSEE revised final paragraph (a)(2) to clarify that the temperature safety high (TSH) must be equipped in the discharge piping of each compressor cylinder or case discharge. BSEE also revised final paragraph (b) to clarify the requirements for establishing new operating pressure ranges after specified pressure changes, consistent with other sections of the final rule, in response to comments seeking clarification on the subject.

After consideration of various issues raised by commenters, BSEE omitted proposed paragraph (c), which would have provided an exception to the installation of PSHs and PSLs for vapor recovery units (VRUs) when the system is capable of being vented to the atmosphere, from the final rule.

BSEE added a new paragraph (c) to the final rule that includes the contents of proposed paragraphs (b)(1) through (b)(3). New paragraph (c) also clarifies that initial set points for pressure sensors must be set utilizing gauge readings and engineering design. These changes were made to make the requirements for operating pressure ranges and pressure sensors consistent with similar provisions in other sections of the final rule.

Comments and responses—BSEE received public comments on this section and responds to those comments as follows:

Temporary Flaring of Gas-Well Gas

Comment—A commenter suggested revising the language in proposed § 250.858(a)(3) to allow temporary flaring of gas-well gas in the event of an upset condition within allowable flare limits. The commenter suggested that gas-well gas affected by the compressor's closure of the automatic SDV could be shut-in manually or temporarily diverted to a flare if compliant with §§ 250.1160 through 250.1161.

Response—As the commenter noted, temporary flaring of gas-well gas is directly addressed in part 250, subpart K (§§ 250.1160 and 250.1161), which sets the conditions for flaring or venting gas-well gas. However, after consideration of issues related to this comment, BSEE agrees with the commenter that allowing gas-well gas to be flared or vented in the event of an upset condition with a gas compressor can be done consistently with existing §§ 250.1160 and 250.1161. Accordingly, BSEE has changed the language in final § 250.858(a)(3) to clarify that gas-well gas can be diverted to flare or vent in accordance with the requirements §§ 250.1160 and 250.1161.

However, BSEE has deleted proposed paragraph (c), which would have created a general exception to the installation of PSHs and PSLs for VRUs when the system is capable of being vented to the atmosphere. BSEE deleted that proposed exception because, after considering all the issues raised by commenters, BSEE realized that, for some VRUs, the volume of gas from the tank could create a suction pressure exceeding 5 psig, resulting in an over-pressure that could cause the VRU to burst. Therefore, BSEE decided that it needs to confirm that the system is operating at 5 psig before approving a system that could be vented to the atmosphere without a PSH and PSL installed.

Compressor Skids

Comment—A commenter noted that the proposed regulation did not compensate for lower operating ranges throughout the compressor skid, especially when considering VRUs. The commenter noted that it is highly unlikely that a VRU would have an operating change of 50 psig or greater and expressed concern that the proposed requirement for compressor discharge sensors did not provide for normalized operating ranges. The commenter questioned the purpose of the proposed rule, since the commenter asserted that operators are currently permitted by BSEE to establish new operating ranges at less than the proposed pressure change threshold of 50 psig or 5 percent, whichever is greater, to help prevent nuisance shut-ins.

Response—BSEE disagrees with the suggestion that this regulation will not help prevent nuisance shut-ins. As previously discussed in response to similar comments, establishing new normalized operating pressure ranges, whenever actual operating pressure changes by the amounts specified in this provision, will help prevent nuisance shut-ins. Operating pressure ranges need to be re-established periodically, and sensors need to be reset to reflect normal changes in operating pressures. If not, shut-ins are more likely to occur because the unadjusted pressure range and sensors could indicate an abnormal condition when a pressure change would otherwise be considered routine and within the adjusted pressure range. In addition, as previously explained, BSEE has set the threshold for requiring the establishment of new pressure ranges at levels that provide a reasonable safety cushion. However, BSEE agrees with the commenter in that an operator may choose to set a pressure change threshold below 50 psig or 5 percent in order to re-set the normalized operating pressure range more frequently (and thus further reduce the possibility of a nuisance shut-in) than would otherwise be required under this regulation.

Centrifugal Compressors

Comment—A commenter noted that the proposed section used language suggesting that it would apply to devices on reciprocating compressors and recommended that BSEE include an additional section for centrifugal compressors since they appear to comply with API RP 14C as well.

Response—BSEE revised this section to better conform to the language of API RP 14C which does not distinguish between the different types (*i.e.*, centrifugal or reciprocating) of compressors. The determination as to the types of protective equipment required under API RP 14C applies regardless of the type of compressors. If a specific installation does not meet the criteria for a defined gas compressor component under API RP 14C, the operator should consult the District Manager to determine what equipment under API RP 14C is required.

Firefighting Systems (§ 250.859)

Section summary—BSEE moved the contents of existing § 250.803(b)(8), pertaining to firefighting systems, to final §§ 250.859, 250.860, and 250.861

and revised the existing requirements to include a number of additional requirements, including several provisions contained in NTL No. 2006–G04, "Fire Prevention and Control Systems."

Final § 250.859(a) clarifies the requirements for firefighting systems on fixed facilities only, and includes requirements from existing § 250.803(b)(8)(i) and (ii), as proposed. Final paragraph (a) also requires, as proposed, that within 1 year after publication of the final rule, operators must equip all new firewater pump drivers with capabilities for automatic starting upon activation of the ESD, fusible loop, or other fire detection systems. Final paragraph (a) also requires that, for electric-driven firewater pump drivers, operators must install an automatic transfer switch to cross over to an emergency power source in order to maintain at least 30 minutes of run time in the event of a loss of primary power. The final rule also specifies requirements for routing power cables, or conduits with wires installed, between the fire water pump drivers and the automatic transfer switch away from hazardous-classified locations that can cause flame impingement.

Final paragraphs (a)(3) and (4) include the requirements of former § 250.803(b)(8)(iv) and (v) regarding firefighting system diagrams and subfreezing climate suitability, respectively. Final paragraph (a)(5) requires operators to obtain approval from the District Manager before installing any firefighting system. Final paragraph (a)(6) requires that all firefighting equipment located on a facility be in good working order.

Final paragraph (b) was added to clarify the requirements for firewater systems to protect all areas where production-handling equipment is located on floating facilities. This section also requires the operator to install a fixed water spray system in enclosed well-bay areas where hydrocarbon vapors may accumulate and provides that the firewater system must conform to applicable USCG requirements.

Final paragraph (c) specifies that if an operator is required to maintain a firewater system which becomes inoperable, the operator either must shut-in its production operations while making the necessary repairs or, for fixed facilities, request that the appropriate District Manager grant a departure under § 250.142 to use a firefighting system using chemicals on a temporary basis for a period up to 7 days while the necessary repairs to the firewater system are made. This paragraph also clarifies that, for fixed facilities, if the operator is unable to complete repairs during the approved time period because of circumstances beyond its control, the District Manager may grant extensions to the approved departure for periods up to 7 days.

Regulatory text changes from the proposed rule—This section was revised, based on comments received, to clarify that it applies to facilities and areas subject to BSEE authority, as explained in the following responses to specific comments. In addition, the word "BSEE" was removed before the "District Manager" throughout the section for consistency and because it was superfluous. BSEE also reworded and reorganized several provisions for greater clarity and to avoid ambiguity and potential confusion.

Comments and responses—BSEE received public comments on this section and responds to those comments as follows:

Redundancy in Firefighting Systems

Comment—A commenter noted that firefighting systems have redundancy and that they can be fully functional, and redundant, even when some equipment is down for repair. The commenter asserted that this rule should make provisions for this to avoid a facility being deemed out of compliance when some components of the firewater system are being repaired, even though the system as a whole is still functional.

Response—BSEE disagrees. To safely conduct operations the firefighting systems must be fully functional. Redundancy is required in case the system fails when needed, not to provide coverage for repairs.

Jurisdiction for Fire Protection and Firefighting Systems

Comment—A commenter asserted that, for both fixed and floating facilities, USCG has jurisdiction over most of the fire protection, detection, and extinguishing system areas, except for the production handling area. The commenter suggested that the regulations should be limited to this area only, and that any proposed requirements for firefighting in other areas, including well bays, should be removed, along with requirements for fire water pumps. The commenter also requested that all discussion of firewater systems, chemical firefighting systems, and foam systems should be clarified to state that they apply only to the production-handling area. The commenter asserted that USCG has jurisdiction for fire and smoke detection, so those requirements should be limited to interfaces with BSEE systems (such as the ESD system).

Response—This comment was also made in reference to §§ 250.842 and 250.861. As discussed in response to other comments, BSEE's regulations apply only to operations and systems that are under BSEE's authority. (*See* discussion in part IV.B.2 of this document regarding BSEE's jurisdiction under the heading "BSEE and U.S. Coast Guard (USCG) Jurisdiction," including discussion of BSEE–USCG MOAs describing situations in which BSEE and USCG share responsibility for various aspects of firefighting.)

To further clarify this point, BSEE has revised paragraph (a) in the final rule so that the requirements expressly apply to areas where production-handling equipment is located on fixed facilities. BSEE also revised final paragraph (b) to clarify that the requirements in that paragraph apply to areas on floating facilities where production-handling equipment is located. In addition, final paragraph (b) requires the firewater system to conform to USCG requirements for firefighting systems on floating facilities. Further, BSEE revised final paragraph (c) to clarify that the provision allowing an operator to request permission from BSEE to temporarily use a chemical firefighting system, in the event the firewater system becomes inoperable, applies to fixed facilities only. In addition, as discussed in part IV.C, BSEE has revised the firefighting-related requirements of final §§ 250.859 through 250.862 to further clarify that they apply to areas and systems under BSEE's authority, and to confirm that operators must also comply with applicable USCG regulations. Section 250.842 already clearly states that it applies to the production safety system.

Arctic Requirements

Comment—A commenter suggested that BSEE work with Arctic firefighting experts to develop firefighting system regulations to address suppression of hazardous material, electrical, flammable liquid, and combustible liquid fires that may occur at Arctic OCS operations and that BSEE should include those requirements in the regulation. The commenter noted that BSEE proposed a number of improvements to firefighting systems for OCS operations, including a proposed improvement at § 250.859 that requires OCS facilities to be shut-in if the firewater system becomes inoperable. However, the commenter asserted that the regulations do not appear to address specific firefighting requirements needed for the Arctic. The commenter stated, as an example, that wet pipe fire water systems (*i.e.*, systems continuously charged with fire water) are not used in Arctic operations because of the risk of freezing and pipe burst. The commenter also discussed the potential advantages of dry pipe, dry chemical, and dry powder fire extinguishing systems.

Response—BSEE understands that the Arctic may present unique operating conditions. Final § 250.859(a)(4) includes firewater system requirements for operations in subfreezing climates, including a requirement to submit evidence demonstrating that the firefighting system is suitable for subfreezing conditions. Any permit application must address the specific operating conditions where the activity is taking place, and BSEE considers those conditions when reviewing a permit application. Any firefighting system proposed for use in the Arctic OCS, must be able to perform in the environmental conditions found in the Arctic. Specific requirements for chemical firefighting systems are found in § 250.860 of this rulemaking. However, as already explained in response to other comments, BSEE expects to address other Arctic-specific issues in the future through a variety of mechanisms, potentially including separate rulemakings, guidance, or other documents.

Redundant Power Source

Comment—A commenter asserted that BSEE would be correct to require an alternative power source for firefighting systems because, if the main engine room, the main engines, or associated power cables are disrupted by fire, the firefighting systems may become inoperable. The commenter asserted that an alternative power source, preferably placed in a location separate from the main engine room should be available to provide alternative power to firefighting equipment during an emergency.

Response—BSEE generally agrees with the comment and has finalized paragraph (a)(2) with only minor wording and organizational changes. BSEE notes that, if an electric firewater pump is based on a fuel gas system, the personnel on the facility may not have adequate time for egress if they need to shut down the generator. Accordingly, the final rule requires an emergency power source with an automatic transfer switch and requires that fuel or power for firewater pump drivers must be available for at least 30 minutes of run time during a platform shut-in. The operator must also install an alternate fuel or power supply to provide for this pump operating time, if needed. This is consistent with the provisions in the proposed rule.

API RP 14G and Floating Facilities

Comment—A commenter agreed that the inclusion of certain proposed provisions would enhance safety, but asserted that the incremental benefits of incorporating all of API RP 14G standard would not justify the increased costs. The commenter stated that API RP 14G does not offer a "cookbook" method of designing and installing a complete firefighting system; instead, API RP 14G offers recommended criteria for whatever firefighting system the operator chooses to install. The commenter asserted that the proposed rule did not account for existing systems that were approved under the current regulations and under current approval and inspection policies. The commenter also asserted that the proposed rule did not take into account potential conflicts with USCG firefighting requirements for floating facilities.

The commenter recommended that BSEE separate firefighting requirements for fixed facilities from those for floating facilities since the latter are driven mainly by the USCG. The commenter also recommended revisions to clarify the separate requirements for fixed facilities and floating facilities and to account for currently approved systems in service.

Response—BSEE agrees with several of the commenter's recommended changes and has revised this section accordingly. BSEE also revised final paragraph (a) to state that the "firewater system" on fixed facilities must conform to API RP 14G, in order to clarify that compliance with API RP 14G is required only for the firewater systems and not for all firefighting systems, as implied by the proposed language. (This revision is also consistent with the existing regulations.)

As suggested by the commenter, BSEE also revised the final rule to clarify the separate requirements for firefighting systems on fixed facilities and floating facilities. These changes help ensure that there are no conflicts with the USCG for firefighting systems by focusing this final section on areas where production-handling equipment is located and on enclosed well-bay areas where hydrocarbon vapors may accumulate, and by referring to the need to comply with USCG requirements for floating facilities.

Chemical Firefighting System (§ 250.860)

Section summary—Existing § 250.803(b)(8)(iii) allows the use of a chemical firefighting system in lieu of a water-based system if the District Manager determines that the use of a chemical system provides equivalent fire-protection control. Final § 250.860 recodifies this concept and includes a number of additional details from NTL No. 2006–G04 in order to update BSEE's regulations pertaining to firefighting. This final rule specifies requirements regarding the use of chemical-only systems on fixed platforms; specifically, major platforms, minor manned platforms, or minor unmanned platforms. The final rule also defines the terms "major," "minor," "unmanned," and "manned" platforms.

Final § 250.860(a) addresses the potential use of a chemical-only firefighting system, in lieu of a water-based system, on any fixed platform that is both minor and unmanned. Final paragraph (a) authorizes the use on such platforms of either of two types of portable dry chemical units, as long as the operator ensures that the unit is available on the platform when personnel are on board. A facility-specific authorization from BSEE would not be required under this paragraph.

Paragraph (b) of the final rule allows use of a chemical firefighting system, in lieu of a water-based system, on any fixed major platform or minor manned platform, if the District Manager determines that the use of a chemical-only system provides equivalent fire-protection control and would not increase the risk to human safety. To provide a basis for the District Manager's determination that the use of a chemical system provides equivalent fire-protection control, final paragraph (c) requires an operator to submit a justification addressing the elements of fire prevention, fire protection, fire control, and firefighting on the platform. Final paragraph (c) also requires the operator to submit a risk assessment demonstrating that a chemical-only system would not increase the risk to human safety. That paragraph lists the items that the operator must include in the risk assessment.

Final § 250.860(d) addresses the documentation that an operator must maintain or submit for the chemical firefighting system. This paragraph also clarifies that, after the District Manager approves the use of a chemical-only fire suppressant system, if the operator intends to make any significant change to the platform (such as placing a storage vessel with a capacity of 100 barrels or more on the facility, adding production equipment, or planning to man an unmanned platform), the operator must seek BSEE District Manager approval.

Regulatory text changes from the proposed rule—BSEE revised this section to clarify that it applies only to fixed platforms. Throughout this section, "BSEE" was removed before "District Manager" for consistency. In addition, BSEE reorganized and restructured the final rule to make it clearer and easier to understand.

Comments and responses—BSEE received public comments on this section and responds to those comments as follows:

Limit to Fixed Platforms

Comment—A commenter recommended that this paragraph be limited to fixed platforms only because, in accordance with item 12 of the MOA OCS–04 between MMS (now BSEE) and the USCG, firefighting safety equipment and systems on floating offshore facilities are the responsibility of the USCG.

Response—As already explained in response to other comments, BSEE's regulations only apply to operations that are under BSEE authority. However, BSEE has added language to the beginning of this section in the final rule to clarify that it applies to fixed platforms only. (*See* part IV.B.2 for a more detailed discussion of BSEE's and USCG's jurisdiction.)

Risk Assessment Criteria

Comment—A commenter asserted that BSEE was proposing to codify existing NTL No. 2006–G04, but that the proposed rule did not indicate how the proposed risk assessment criteria will be evaluated. The commenter understands that BSEE developed a risk matrix for use in evaluating an operator's risk assessment. The commenter recommended that BSEE include the risk matrix with the risk assessment criteria in the final rule in order to save both the operator and BSEE time in preparing and reviewing, the request.

Response—No changes are necessary. The final rule includes the categories of information required for BSEE's risk assessment from NTL No. 2006–G04, "Fire Prevention and Control Systems." The operator must address those categories; however, BSEE does not believe it is necessary or appropriate to include the requested details in this final rule. Such details may be better addressed in an internal BSEE guidance document, which may be revised as circumstances warrant.

Foam Firefighting Systems (§ 250.861)

Section summary—Final § 250.861 establishes requirements for the use of foam firefighting systems. Under the final rule, when foam firefighting systems are installed as part of a firefighting system, the operator must annually: (1) Conduct an inspection of the foam concentrates and their tanks or storage containers for evidence of excessive sludging or deterioration; and (2) send tested samples of the foam concentrate to the manufacturer or authorized representative for quality condition testing and certification. The final rule specifies that the certification document must be readily accessible for field inspection. In lieu of sampling and certification, the final rule allows operators to replace the total inventory of foam with suitable new stock. The rule requires that the quantity of concentrate must meet design requirements, and that tanks or containers must be kept full but with additional space allowed for expansion.

Regulatory text changes from the proposed rule—BSEE revised this section in the final rule to clarify that it is applicable to firefighting systems that protect production handling areas. This revision is based upon comments received about jurisdictional concerns.

Comments and responses—BSEE received public comments on this section and responds to those comments as follows:

Limit to Fixed Platforms

Comment—A commenter recommended that this paragraph be limited to fixed platforms only. The commenter asserted that item 12 of the MOA OCS–04 between MMS (now BSEE) and the USCG provides that firefighting safety equipment and systems on floating offshore facilities are the responsibility of the USCG.

Response—BSEE does not agree that the recommended change is necessary. As previously explained, these regulations apply only to those operations, whether on fixed or floating platforms, that are covered by BSEE authority. However, BSEE has revised the final rule to clarify that it applies only to production handling areas, which are subject to BSEE's authority.

Sample Testing

Comment—A commenter stated that proposed paragraphs (a) and (b) would impose new requirements for sending in samples for testing. The commenter asserted that this would require additional costs and resources to comply but would not add significant value. The commenter also stated that other requirements in paragraph (a) would be sufficient to ensure the suitability of the foam.

Response—BSEE does not agree that the testing requirements of this section will not add value. Regular testing of the foam concentrate will ensure that it does not deteriorate and that it will be effective in the event of a fire. If an operator plans for sampling and testing in accordance with this section, that process should not add significant new costs. For example, the sampling can be arranged to coincide with already scheduled trips to and from the facility.

Fire and Gas-Detection Systems (§ 250.862)

Section summary—The contents of existing § 250.803(b)(9) have been revised and moved to § 250.862 in the final rule. This section establishes requirements pertaining to fire and gas-detection systems. Operators must install fire (flame, heat, or smoke) sensors in all enclosed classified areas and must install gas sensors in all inadequately ventilated, enclosed classified areas. All detection systems must be capable of continuous monitoring. A fuel-gas odorant or an automatic gas-detection and alarm system is required in enclosed, continuously manned areas of the facility which are provided with fuel gas. This section incorporates several API standards that operators must follow for these systems.

Regulatory text changes from the proposed rule—BSEE revised this section to clarify that it applies only to production processing areas. BSEE also clarified that, to the extent compliance with the identified industry standards would conflict with an applicable USCG regulation, the USCG requirement controls.

Comments and responses—BSEE received public comments on this section and responds to those comments as follows:

Limit to BSEE-Regulated Systems

Comment—A commenter recommended that this paragraph be limited to BSEE regulated safety systems only. The commenter asserted that item 12 of the MOA OCS–04 between MMS (now BSEE) and the USCG provides that fire and smoke detection systems on floating offshore facilities are responsibility of the USCG, except where those detection systems interface with BSEE regulated safety systems.

Response—As previously discussed, these regulations apply only to operations that are under BSEE's authority. Proposed § 250.862, in effect, merely proposed to recodify, with limited alterations, longstanding requirements of BSEE regulation that existed at the time of the MOA cited by the commenter,[24] and the application of which has not presented jurisdictional issues. Nevertheless, BSEE has revised this section of the final rule to clarify that it applies only to production processing areas, which are under BSEE's authority. BSEE also has revised final paragraph (e) to clarify that, in the event compliance with any provision of the standards referenced in this section would conflict with any provision of an applicable USCG regulation, compliance with the USCG regulation controls. BSEE and USCG authority was discussed previously in part IV.B.2.

Applicability

Comment—A commenter suggested revising the requirement for "gas detection systems" in proposed § 250.862(e) to "gas detectors," asserting that there is "type approval" in place for gas detectors but not for gas detection systems. The commenter also stated that some legacy gas detectors do not have approval because they were manufactured prior to the approval standard issue date, and recommended that BSEE apply the proposed requirement only to new installations. The commenter also asserted that the proposed rule could conflict with USCG requirements for fire and gas detection systems on floating offshore installations.

Response—The relevant provisions in the final rule are consistent with current regulations. The distinction identified by the commenter between "gas detection systems" and "gas detectors" does not present an issue under these longstanding requirements; nor should the recodification of the existing requirements apply only to new installations. In addition, as previously discussed, these regulations apply only to operations that are under BSEE's authority. Nonetheless, BSEE has revised the final rule to clarify that it applies only to production processing areas and that, in the event compliance with any provision of the standards would be in conflict with any applicable USCG regulation, compliance with the USCG regulation controls.

Electrical Equipment (§ 250.863)

Section summary—The final rule recodifies existing § 250.803(b)(10) as § 250.863, which pertains to basic requirements for electrical equipment and systems. BSEE has revised this provision for clarity and plain language.

Regulatory text changes from the proposed rule—BSEE did not make any significant changes to this section.

Comments and responses—BSEE received public comments on this section and responds to those comments as follows:

Limit to BSEE-Regulated Electrical Systems

Comment—A commenter recommended that this paragraph be limited to BSEE-regulated electrical systems only. The commenter asserted that item 14 of the MOA OCS–04 between MMS (now BSEE) and the USCG provides that electrical systems—other than production, drilling, completion well servicing and workover operations—on floating offshore facilities are the shared responsibility of BSEE and the USCG, except for emergency lighting, power generation and distribution systems, which the commenter stated are the sole responsibility of the USCG.

Response—Final § 250.863, in effect, merely recodifies the longstanding requirements of existing § 250.803(b)(10), which was in effect at the time the MOA referred to by the commenter was developed and the application of which has not presented jurisdictional issues. This final rule is not a substantive change to the existing regulations, and only applies to operations under BSEE's authority. Thus, there is no reason to adopt the commenter's suggested revision.

Erosion (§ 250.864)

Section summary—The final rule moves the contents of existing § 250.803(b)(11), pertaining to erosion control, to new § 250.864.

Regulatory text changes from the proposed rule—BSEE did not make any significant changes to this section in the final rule.

Comments and responses—BSEE received public comments on this section and responds to those comments as follows:

Corrosion Management

Comment—A commenter observed that this section would be clearer if it addressed corrosion monitoring and corrosion control as two separate aspects of a corrosion management program. The commenter recommended that BSEE require that operators implement erosion monitoring programs for wells or fields that have a history of (or could reasonably be expected to encounter) erosion due to sand production. The commenter asserted that, with this revision, not all fields/wells/leases would require an erosion control program.

Response—The proposed rule did not propose any substantive changes to the requirements in the existing regulation. By contrast, the commenter's suggested revision would impose new requirements for corrosion monitoring and control and erosion monitoring that were not part of the proposed rulemaking and are outside the scope of this final rule.

Surface Pumps (§ 250.865)

Section summary—Final § 250.865, pertaining to surface pumps, contains material from existing § 250.803(b)(1)(iii) related to pressure and fired vessels and adds new requirements for pump installations. Final paragraph (a) includes a specific requirement to equip all pump installations with the protective equipment recommended by API RP 14C, Appendix A, section A.7, and final paragraph (b) includes a new requirement to use pressure recording devices to establish new operating pressure ranges for pump discharge sensors when operating pressures change by a specified amount. As noted in the proposed rule, the final rule also adds provisions related to the operation of PSL and PSH sensors, temperature safety element (TSE), and pump pressures.

Regulatory text changes from the proposed rule—In response to comments on similar provisions in other sections of the proposed rule, BSEE revised paragraph (b) of the final rule to clarify the requirements for establishing a new operating pressure range following a change in normalized system pressure. These revisions make final paragraph (b) consistent with similar provisions in other sections of the final rule.

BSEE also added new paragraph (c) in the final rule to improve the presentation and clarity of the information contained in proposed paragraph (b), reformatting that information as a table to be consistent with the structure in other sections related to PSLs and PSHs, and to clarify that initial set points for pressure sensors must be set using gauge readings and engineering design. Final paragraph (c) is consistent with the requirements for operating pressure ranges and pressure sensors in other sections of the final rule.

In light of the other revisions made to the proposed section, the remaining paragraphs of the proposed rule were redesignated as paragraphs (d) through

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[24] MOA OCS–04 was revised by BSEE and USCG in January 2016, after the proposed rule was published and comments submitted. The revised MOA is available at *https://www.bsee.gov/sites/bsee.gov/files/memos/internal-guidance/010-2016-moa.pdf*.

(g). BSEE also revised final paragraph (d) to clarify that the PSL must be placed into service when the pump discharge pressure has risen above the PSL sensing point, or within 45 seconds of the pump coming into service, whichever is sooner. In addition, BSEE revised final paragraph (g) to insert the phrase "as appropriate for pump type and service" for additional clarification.

Comments and responses—BSEE received public comments on this section and responds to those comments as follows:

Normalized System Pressure Threshold

Comment—One commenter declared that a pressure change of 50 psig or 5 percent is too low a threshold to require re-running a pressure chart and suggested raising the pressure change threshold 100 psig or 15 percent.

Response—No changes are necessary. As discussed in response to similar comments on other sections, the proposed—and now final—threshold is consistent with similar requirements in other sections of the final rule, and is intended to both reduce the number of nuisance shut-ins and to provide a safety "cushion" that will give operators more time to act in the event the pressure change indicates an actual abnormal condition. The commenter's suggestion for a higher threshold, by contrast, would not accomplish those goals, as previously discussed, and could result in higher risk that an incident will occur.

Applicable Pumps

Comment—One commenter noted that it was unclear as to what "pumps" the requirement in proposed paragraph (a) would apply. The commenter assumed that this provision would apply only to those pumps in the production process and to pipeline transfer, small volume produced hydrocarbon transfer, or other process fluids transfer pumps recognized in API RP 14C. The commenter recommended that BSEE clarify this requirement to apply only to those pumps specifically recognized in API RP 14C.

Response—No changes are necessary. This section, by its terms, is applicable to the types of surface pumps specified in the section heading and addressed by API RP 14C, which is already incorporated in longstanding BSEE regulations. BSEE is not requiring operators to follow API RP 14C for any surface pumps other than those specified in that standard.

Threshold for Pressure Monitoring

Comment—A commenter claimed that continuous monitoring for a 5 percent pressure change threshold would be problematic and asserted that the proposed regulation would not compensate for lower operating ranges, especially when considering pumps that discharge to pressure vessels that operate at just above atmospheric service. The commenter included an example scenario for a sump pump discharging to a pressure vessel, and discussed the effects the proposed requirement would have under that scenario.

Response—No changes are necessary. As previously stated, the 5 percent pressure change threshold is consistent with the API RP 14C pressure tolerance setting for PSHL sensors. Moreover, the thresholds established by the rule represent pressure changes at which an operator must establish new operating pressure ranges; however, operators may use a more conservative approach, by resetting their operating pressure ranges following a pressure change that is less than 5 percent or 50 psig, to account for situations like that raised by the commenter. If there are additional concerns about the operating range in a specific situation, operators may contact the District Manager for guidance. BSEE also added language to final paragraph (b) to clarify the requirements for establishing the new pressure range.

Comment—According to a commenter, most operators do not monitor the operating ranges to see if they fluctuate by 5 percent because such fluctuations do not typically indicate a change in the maximum operating pressure. The commenter stated that current practices for ensuring pressures are below the maximum operating pressure are sufficient to ensure proper operation, that industry would need to institute new field protocols, which would require additional resources by the operator, to comply with the proposed requirement, and that it is not clear that this new requirement would add value beyond current requirements. The commenter recommended specific revisions to paragraph (b) that would increase the proposed 5 percent pressure change threshold to 15 percent.

Response—No changes are necessary. As discussed in prior responses to similar comments, the thresholds in this section of the proposed and final rule are intended to help prevent nuisance shut-ins as well as safety and environmental incidents, while the commenter's suggested higher thresholds would not satisfy the safety and environmental protection goals of this section and would not help prevent nuisance shut-ins through more frequent re-setting of operating pressure ranges. If an operator has additional concerns about the specified threshold for re-setting the operating pressure range under specific circumstances, the operator can contact the District Manager for guidance or seek approval for an alternate procedure under the DWOP process or existing § 250.141. However, BSEE added language to the final rule (consistent with similar provisions in other sections) that specifies a time interval for recording pressure as a basis for a new operating pressure range. This clarification should help mitigate the commenter's asserted concern about the need for new field protocols.

Comment—A commenter suggested revising the language of proposed § 250.865(b), since the highest operating pressure of the discharge line should include the transient pressure spike associated with starting up or shutting down system pumps, provided that the pressure spike is within the system MAWP; otherwise, the commenter asserted, the PSH sensor will trip whenever an additional pump is started, forcing operations to temporarily bypass the PSH sensor. The commenter stated that it is very difficult to completely design away transient pressure spikes for liquid-filled systems. The commenter also requested that BSEE clarify the proposed requirement for re-establishing operating pressure range when normalized operating pressure changes by 5 percent. The commenter also asserted that proposed § 250.865(b) would only prohibit setting PSH/PSL trip points that are more than 15 percent above/below the established pressure range, so that a 5 percent change in pressure that moves the operating pressure closer to the trip point would not violate this requirement. The commenter suggested that, to avoid conflicts, re-running the range charts should only be required if the change exceeds the parameters of § 250.865(b). The commenter also recommended specific revisions to paragraph (b) to address the commenter's concerns.

Response—No changes are necessary. With regard to the commenter's concern about transient pressure spikes (during start-ups or shutdowns) causing the PSH sensor to trip, BSEE revised final paragraph (b) by adding minimum and maximum time periods (*i.e.,* no less than 4 hours and no more than 30 days) for recording pressures to be used in setting a new operating pressure range. The minimum time period is intended to ensure that the system pressure is stable during the recording period used to set a new operating range. The time period limits were also set, in part, in order to allow operators to discern repeatability, including pressure spikes and/or surges, during the time period. These time period limits should reduce, if not eliminate, the commenter's concern about transient pressure spikes during pump startup and shutdown. In addition, the pressure recording time period limits and other revisions to final paragraph (b), as discussed in prior responses to similar comments, clarify the requirement for recording pressures and resetting the normal operating pressure range, as requested by the commenter.

With regard to the commenter's assertions regarding the proposed PSH/PSL trip points (which BSEE moved from paragraph (b) to paragraph (c) in the final rule), BSEE agrees that this provision does not preclude an operator from setting a PSH or PSL trip point below the specified maximum of 15 percent (or 5 psi, whichever is higher) above the highest operating pressure of the discharge line. Thus, as the commenter observed, a trip point that is 5 percent above the highest operating pressure of the discharge line would not violate this requirement. However, BSEE notes that, as proposed, final paragraph (c) specifies that the trip point for a PSH sensor must be set at least 5 percent (or 5 psi, whichever is greater) below the set pressure of the PSV; not 15 percent below the pressure range, which the commenter incorrectly implied was part of the proposal. The 5 percent limit in this provision is intended to improve safety and environmental protection by assuring that the pressure source is shut-in before the PSV activates; while the 15 percent limit suggested by the commenter would not be as effective in meeting those goals. If an operator has any additional concerns about its operating pressure range, it they can contact the District Manager for guidance.

Maximum Discharge Pressure

Comment—One commenter noted that, under proposed paragraph (f), the pump maximum discharge pressure must be determined using the maximum possible suction pressure and the maximum power output of the driver. The commenter asserted that the maximum discharge pressure for centrifugal pumps typically is determined by the maximum suction pressure at the shutoff head and, for positive displacement pumps, by the set pressure of the PSV at the discharge.

Response—BSEE agrees with the commenter and has revised final paragraph (g) of this section to clarify the appropriate method to determine the pump maximum discharge pressure, using the maximum possible suction pressure and the maximum power output of the driver as appropriate for the pump type and service.

Personnel Safety Equipment (§ 250.866)

Section summary—Final § 250.866 is a new section that requires the operator to maintain all personnel safety equipment located on a facility in good working condition, without regard to whether the equipment is required.

Regulatory text changes from the proposed rule—BSEE did not make any significant changes to this section.

Comments and responses—BSEE received public comments on this section and responds to those comments as follows:

Move Section to Subpart A

Comment—A commenter asserted that this proposed requirement is out of place in this section of subpart H, stating that it is a general duty statement that belongs in subpart A at § 250.107. The commenter recommended deleting this requirement from subpart H.

Response—BSEE does not agree that it would be appropriate to move this provision to subpart A at this time. BSEE agrees with the commenter that this requirement might be an appropriate addition to subpart A at a future date through a separate rulemaking. Moving this section to subpart A in this final rule, however, would be outside the scope of this rulemaking. Nor is it inappropriate to include this requirement in subpart H, since it is certainly applicable to personnel safety equipment located on facilities subject to this final rule.

BSEE Responsibilities

Comment—Several comments requested clarification on BSEE's responsibilities for personnel safety equipment requirements on the OCS compared to USCG's responsibilities. The commenters expressed their opinion that USCG, not BSEE, should have oversight for required and non-required personnel safety equipment on the OCS. They recommended that BSEE remove this requirement from subpart H.

Response—BSEE is not requiring any new additional personnel safety equipment under this provision, but only requiring that this equipment, if located on a facility, be maintained in good working condition. As previously discussed, this final regulation applies to operations and systems, including safety issues, on facilities under BSEE's jurisdiction.

Temporary Quarters and Temporary Equipment (§ 250.867)

Section summary—Final § 250.867 is a new section that requires that all temporary quarters to be installed in production processing areas or other classified areas on OCS facilities be approved by BSEE and be equipped with all safety devices required by API RP 14C, Appendix C. It also clarifies that the District Manager may require the installation of a temporary firewater system. This new section also requires that temporary equipment in production processing areas or other classified areas used for well testing and/or well clean-up be approved by the District Manager. These temporary equipment requirements are based on a number of incidents involving the unsuccessful use of such equipment and will help ensure that BSEE has a more complete understanding of all operations associated with such temporary quarters and temporary equipment.

Regulatory text changes from the proposed rule—BSEE revised paragraph (a) of this section in the final rule to state that the District Manager must approve the installation of all temporary quarters installed in production processing areas or other classified areas on OCS facilities. BSEE also revised paragraph (b) to clarify that the District Manager may require temporary firewater systems "for" (rather than "in") temporary quarters in such areas, and revised final paragraph (c) to clarify that the District Manager must approve temporary equipment associated with the production processing system, including equipment used for well testing and/or well clean up. These changes were made to clarify that these requirements apply to areas or equipment under BSEE's authority.

Comments and responses—BSEE received public comments on this section and responds to those comments as follows:

BSEE Authority

Comment—A commenter asserted that the proposed rule exceeded BSEE's authority as fire-fighting requirements for accommodations and machinery spaces are the responsibility of the USCG. Additionally, the commenter stated that there are no BSEE requirements in either the existing regulations or the proposed regulations that require firewater systems in permanent quarters or temporary quarters. The commenter recommended that BSEE delete this section from the proposed rule.

Response—As previously discussed, these regulations apply only to operations under BSEE's authority. These requirements are based on several past incidents involving unsuccessful use of temporary equipment. Currently, BSEE receives limited information regarding temporary equipment. This final rule will help ensure that BSEE has a more complete understanding of operations associated with temporary quarters and temporary equipment in production processing or other classified areas, which in turn will help BSEE ensure that such operations are conducted in a manner that prevents or minimizes the likelihood of fires and other incidents that may damage property or the environment or endanger life or health.

In addition, BSEE expects operators to address the impacts of the temporary quarters and temporary equipment in their SEMS plans. This could include, for example, conducting a hazards analysis (*see* § 250.1911) for the installation of temporary quarters or evaluating safe work practices (*see* § 250.1914) for temporary equipment.

Non-Metallic Piping (§ 250.868)

Section summary—Section 250.868 is a new section that was proposed to limit the use of non-metallic piping to atmospheric, primarily non-hydrocarbon service (such as open atmospheric drains) and thereby preclude the use of non-metallic piping in other situations, such as production process piping (*i.e.,* piping that handles produced hydrocarbons).

Regulatory text changes from the proposed rule—In response to comments, BSEE revised this section to clarify that it applies only to non-metallic piping on fixed OCS facilities and to refer to the requirements for piping in final § 250.841(b), which incorporates API RP 14E, Recommended Practice for Design and Installation of Offshore Production Platform Piping Systems. Section 250.841(b) specifically addresses the installation, repair, testing, and maintenance of production process piping, while API RP 14E includes comprehensive provisions for surface piping systems, including non-metallic piping.

Comments and responses—BSEE received public comments on this section and responds to those comments as follows:

Non-Metallic Piping

Comment—A commenter suggested that this section should be revised to prohibit non-metallic piping for hydrocarbons. The commenter asserted that firefighting piping can be made out of fiberglass reinforced plastic, provided that it does not penetrate a bulkhead and is always wet inside. The commenter asserted that polyvinyl chloride firefighting piping is not good practice and should never be allowed. The commenter also stated that non-metallic piping should not be allowed to penetrate bulkheads or decks, even if atmospheric. The commenter also suggested that BSEE's rules for non-metallic piping should take into consideration the USCG's rules.

Response—BSEE agrees that the proposed section did not fully address all situations in which use of non-metallic piping would or would not be allowed, and that there could be potential confusion about the proposed rule's relation to USCG regulations. Accordingly, BSEE revised this section in the final rule to require that the use of non-metallic piping on fixed facilities be in accordance with the requirements of § 250.841(b), which specifically addresses platform production process piping and which incorporates API RP 14E, including provisions for non-metallic piping. This revision will provide greater clarity to operators while achieving the original purpose of the proposed rule.

Jurisdiction

Comment—A commenter recommended that BSEE limit the proposed requirement in accordance with MOA OCS–04 between MMS (now BSEE) and the USCG. The commenter asserted that piping in galleys and living quarters, as well as firewater systems piping, on floating offshore facilities is the responsibility of the USCG. The commenter added that USCG has specific requirements for the use of non-metallic piping in USCG-regulated systems on such facilities.

Response—As stated in prior responses, BSEE's regulations apply only to operations and systems that are under BSEE authority. However, to further clarify this point, BSEE has revised this section to specify that it only applies on fixed OCS facilities, and to refer back to § 250.841(b), which specifically addresses production process piping and which also incorporates API RP 14E's provisions for non-metallic piping. These revisions limit the scope and applicability of final § 250.868 so as to avoid concerns about its consistency with MOA OCS–04 (as updated on January 28, 2016).

Atmospheric and Pressurized Piping

Comment—One commenter asserted that the proposed regulatory text is confusing in its use of the term "atmospheric," in that the examples given in the proposal implied pressurized piping greater than atmospheric pressure. The commenter said that typical freshwater piping in galleys and living quarters operates at ±75 psig and firewater systems piping operates at ±200 psig.

Response—BSEE agrees with the commenter that the piping in galleys and living quarters and firewater system piping is pressurized piping. BSEE has revised this section in the final rule and eliminated the proposed references to piping in galleys and living quarters and in firewater systems, thus eliminating the potential confusion noted by the commenter. Instead, the final rule now refers to the more comprehensive requirements of § 250.841(b).

New Technology

Comment—A commenter suggested revising the language of proposed § 250.868, since it would cover new technology such as non-metallic HPHT pipe (*e.g.,* Magma's M-pipe) and would preclude the use of M-pipe for future weight-saving in areas such as topside water injection (WI) piping and subsea jumpers. The commenter also suggested that the requirement should be clarified so that it only applies to new installations and does not implicitly require removal of existing approved installations.

Response—As previously stated, BSEE revised this section in the final rule to limit it to fixed OCS facilities and to cross-reference the requirements of final § 250.841(b). Topside WI piping is only found on floating facilities, which are outside the scope of this final provision. The design of subsea jumpers is covered in subpart J of BSEE's regulations and is likewise not within the scope of this section.

General Platform Operations (§ 250.869)

Section summary—BSEE has moved the contents of existing § 250.803(c), pertaining to general platform operations, to final § 250.869, and revised the language for improved clarity. The final rule also includes, as proposed, a new requirement (§ 250.869(e)) that prohibits use, on new installations, of the same sensing points for process control devices and component safety devices.

In addition, as proposed, final paragraph (a) requires that a designated visual indicator be used to identify a bypassed safety device and establishes required monitoring procedures for bypassed safety systems. Final paragraph (a)(1) also sets forth the monitoring requirements for non-computer-based safety systems, while paragraph (a)(2) sets forth the monitoring requirements for computer-based technology systems. More specifically, final paragraph (a)(2)(i) requires computer-based technology system control stations to show the status of operating conditions and to be capable of displaying those conditions, provided that if the computer-based system is not capable of displaying operating conditions, the operator must use field personnel to monitor the level and pressure gauges.

In addition, final paragraph (a)(3) specifies that operators must not bypass, for startup, any element of the emergency support system (ESS) or other support system required by Appendix C of API RP 14C without first receiving approval from BSEE for a departure.

Regulatory text changes from the proposed rule—BSEE revised the proposed rule by adding a new paragraph (f) to clarify that control panels and control stations must be marked consistently with each other using consistent nomenclature as provided in API RP 14C.

Comments and responses—BSEE received public comments on this section and responds to those comments as follows:

Pressure and Temperature-Take Points

Comment—A commenter requested that BSEE revise this section to clarify whether it would require additional pressure and temperature-take points on subsea trees and other subsea equipment. The commenter asserted that it is usually desirable to minimize these leak paths.

Response—No changes are necessary. This regulation does not introduce additional leak paths; it only separates process controls from safety controls in order to ensure the sensing line is only performing a single function. If the process controls and safety controls were not separate, a problem with one system could result in a problem with both systems, thus creating a greater risk that a failure in a process control would also cause a safety system malfunction. Requiring separate systems is also consistent with API RP 14C, which states that the safety system should provide 2 levels of protection, independent of and in addition to the control devices.

Time Delays on Pressure Safety Low (PSL) Sensors (§ 250.870)

Section summary—Final § 250.870, related to time delays on PSL sensors, is a new provision that codifies guidance from NTL No. 2009–G36. The final rule specifies that operators may apply any or all of industry standard Class B, Class C, or Class B/C logic to all applicable PSL sensors installed on process equipment, as long as the time delay does not exceed 45 seconds. It also requires that operators document on their field test records any use of a PSL sensor with a time delay greater than 45 seconds. Final § 250.870 also describes how PSL sensors fit under Class B, Class C, or Class B/C.

The final rule also provides that if an operator does not install time delay circuitry that bypasses activation of PSL sensor shutdown logic for a specified time period on process and product transport equipment during startup and idle operations, the operator must manually bypass (pin out or disengage) the PSL sensor, with a time delay not to exceed 45 seconds.

Regulatory text changes from the proposed rule—Throughout this section, the word "BSEE" was removed before the "District Manager" for consistency with other sections and because it was unnecessary. In response to comments, BSEE revised final paragraph (a) to state that the operator "may apply" industry standard class logic to applicable PSL sensors, rather than stating that the operator "must apply" such logic, as proposed. Similarly, BSEE replaced the phrase "apply any or all of the industry standard Class B, Class C and Class B/C logic" with "apply industry standard Class B, Class C or Class B/C logic" in order to clarify that the operator may choose to use any one (or more) of those classes rather than all three of the classes. In addition, BSEE removed proposed references to alternate procedures under § 250.141 from the final rule because § 250.141 is potentially applicable to all requirements under part 250 and does not need to be expressly cited in this section.

Comments and responses—BSEE received public comments on this section and responds to those comments as follows:

BSEE Role

Comment—One commenter stated that BSEE should not be involved in these day-to-day operational decisions regarding pressure safety devices, as proposed in this section.

Response—Appropriate use of pressure safety devices is critical to ensuring safety and protection of the environment. However, BSEE revised this section in the final rule to state that the operator may apply the class logic, but is not required to use it. This revision gives the operator greater flexibility in meeting this safety goal by allowing for time delays, instead of requiring the operator to bypass the PSL sensors.

Bypasses

Comment—A commenter recommended that PSL sensors should not be required to have timed or pressure build-up bypasses for startup activities. The commenter also asserted that the proposed rule implied that all three industry standard Class logics must be applied simultaneously. Therefore, the commenter recommended that the first sentence be reworded as follows: "You may apply industry standard Class B, Class C, or Class B/C logic to applicable PSL sensors installed on process equipment. . . ." The commenter also asserted that the proposed time limit of 45 seconds for delaying the PSL sensor bypass could be unreasonable during a startup scenario and could cause startup operations to be rushed unnecessarily. The commenter recommended that the time delay be extended to several minutes to account for this.

Response—BSEE agrees with the commenter regarding the proposed class logic language and revised paragraph (a) of this section to state that the operator may apply any or all of the Class B, C or B/C logic, but is not required to use any of those choices. This gives the operator flexibility by allowing for time delays, instead of requiring the operator to bypass the PSL sensors. If BSEE had required the operator to apply class logic, some existing facilities would need to be retrofitted. This revision is consistent with the intent of the proposed rule, which provided in paragraph (b) that an operator that does not use a class logic approach must manually bypass the PSL sensor.

However, BSEE disagrees with the suggestion for extending the time limit on delays to several minutes. Based on BSEE's experience, and consistent with NTLNo. 2009–G36, 45 seconds is typically a reasonable period for pressure to fluctuate before it becomes necessary to alert the operator to an abnormal condition that must be addressed. By contrast, allowing the pressure to remain low for several minutes before the sensor alerts the operator could significantly increase the potential safety risk from the abnormal condition. Thus, BSEE must approve any request to extend the delay period beyond 45 seconds in a specific case.

Welding and Burning Practices and Procedures (§ 250.871)

Section summary—BSEE moved the content of existing § 250.803(d), pertaining to welding and burning practices and procedures, to final § 250.871. BSEE revised the existing language for clarity and plain language and updated the regulatory cross-references.

Regulatory text changes from the proposed rule—BSEE did not make any significant changes to this section. BSEE deleted the proposed cross-reference to the alternate procedures approval process under § 250.141 since that provision is applicable to all requirements in part 250 and does not need to be expressly referenced.

Comments and responses—BSEE received one comment on this section and responds to that comment as follows:

Alternate Compliance and Departures (Variances)

Comment—The commenter asserted that operators should be required to obtain BSEE approval for any variance from a regulatory requirement, including industry standards incorporated by reference into the regulations, and from any approval, permit, or authorization issued by BSEE for an OCS oil and gas production facility.

Response—These types of requests are already covered by existing §§ 250.141 and 250.142 in the form of alternate compliance and departure requests, respectively; therefore, no revision to the regulation is needed in response to this comment.

Atmospheric Vessels (§ 250.872)

Section summary—Final § 250.872 is a new section that requires atmospheric vessels used to process and/or store liquid hydrocarbons or other Class I liquids, as described in API RP 500 or 505, to be equipped with protective equipment identified in API RP 14C. It also includes requirements for level safety high (LSH) sensors) and clarifies that, for atmospheric vessels that have oil buckets, the LSH sensor must be installed to sense the level in the oil bucket. In addition, paragraph (c) requires that all flame arrestors be maintained to ensure proper design function.

Regulatory text changes from the proposed rule—BSEE revised proposed paragraph (a) to list types of tanks that are not required to be equipped with protective equipment.

Comments and responses—BSEE received public comments on this section and responds to those comments as follows:

Authority

Comment—A commenter recommended that BSEE revise this section to state that it is not applicable to the design or operation of tanks inside the hull of a floating facility. The commenter asserted that USCG requirements may be different from BSEE requirements for tanks inside the hull of a unit. Alternatively, the commenter suggested that BSEE–USCG MOA OCS–04 should be revised to give USCG jurisdiction over the design of any tanks that are integral to the hull and to give BSEE jurisdiction over any non-integral tanks in the hull of the unit and over the operation of both integral and non-integral tanks in the hull of the unit that are for produced hydrocarbons, fuel and flow assurance fluids.

Response—BSEE disagrees. This section relates to atmospheric vessels that are a component of drilling, completion, well servicing, and workover operations and that are under BSEE jurisdiction. BSEE is not regulating the design or operation of the tanks; rather, this regulation only requires sensors to ensure safety in the operations BSEE oversees. This is consistent with MOA OCS–04, which was updated in January 2016, and which applies only to floating facilities.

Non-Permanent Storage

Comment—A commenter asked whether it was BSEE's intent to include non-permanent storage of chemicals and other substances used for ancillary operations such as well work, painting, etc. The commenter asserted that, if that was BSEE's intent, compliance would be difficult since many products are stored in transporters, drums and buckets. The commenter stated that inclusion of devices such as LSH sensors would serve no useful purpose since they would not have a "source" to shut in, and connecting them to facility safety systems would impose a major burden since they are moved frequently. The commenter asserted that the proposed requirements for venting and/or flame arrestors for drums and transporters are understandable, but requiring full compliance with API RP 14C atmospheric vessel requirements would impose additional burdens that provide no tangible benefits. The commenter provided recommended revisions to the proposed language.

Response—BSEE does not intend to include non-permanent storage of chemicals and other substances used for ancillary operations such as well work, painting, etc., within the scope of this requirement. The relevant tanks are sealed, with no venting or inlet-outlet valves, and they are not connected to the production process train. To clarify this point, BSEE revised this section to exclude U.S. Department of Transportation-approved transport tanks that are sealed and not connected via interconnected piping to the production process train and that are used for storage only of refined liquid hydrocarbons or Class I liquids.

However, BSEE does not agree with the suggestion for requiring the TSE on atmospheric tanks that are not connected via interconnected piping to the production process train because these tanks are sealed, *i.e.,* there is no venting and no inlets or outlets. BSEE does agree that the TSE is needed if the tank is connected to the production process chain for fire protection.

Comment—A commenter asserted that proposed paragraph (b) would have a huge impact for manufactured "standard" designs currently in service that do not have nozzles for moving level sensors. The commenter asserted that placing LSH sensors in oil buckets may not necessarily reduce risk of pollution, depending on individual equipment design. The commenter added that many systems are configured for the oil bucket level to be much lower than the main compartment level (to prevent overflow of the oil into water) so an LSH sensor in an oil bucket would not sense true "high" levels in the component, requiring two LSH sensors to be installed rather than just relocating the LSH sensor. The commenter claimed that it would be difficult to retrofit vessel oil buckets with an LSH sensor if they do not have the appropriate nozzles and asked whether exceptions would be made for existing equipment currently in service. The commenter provided recommended language to address its concerns.

Response—BSEE agrees with the commenter that the operator must ensure that all atmospheric vessels, whether existing or new, are designed and maintained to ensure the proper working conditions for LSH sensors. Specifically, to ensure proper working conditions for the LSH sensor, the LSH sensor bridle must be designed to prevent different density fluids from impacting sensor functionality. Similarly, for atmospheric vessels that have oil buckets, proper working conditions means the LSH sensor must be installed to sense the level in the oil bucket. This requirement is not just to protect against overflow but also to prevent oily-water interface from going out the water outlet, thus protecting safety and the environment. Thus, for those reasons, BSEE does not agree with the commenter's suggestion to limit the requirements for atmospheric vessels with oil buckets only to new equipment (*i.e.,* that comes into service after this rule takes effect). BSEE expects that most existing equipment will already be in compliance with this requirement, and for those that are not, compliance would only require the relocation of the LSH sensor. However, if an operator requests approval of alternate equipment or a departure from this requirement for the equipment currently in service, BSEE will consider such requests on a case-by-case basis.

Subsea Gas Lift Requirements (§ 250.873)

Section summary—This is a new section that codifies existing policy and guidance from the DWOP process. Under DWOPs, BSEE has approved the use of gas lift equipment and methodology in subsea wells, pipelines, and risers and has imposed conditions to ensure that the necessary safety mitigation measures are in place. While the basic requirements of API RP 14C will apply for surface applications, certain clarifications are made in this section to ensure regulatory compliance when gas lift for recovery for subsea production operations is used. Specifically, final § 250.873 requires that: Gas lift supply pipelines be designed according to API RP 14C; installation of specified safety valves, including a gas-lift shutdown valve and a gas-lift isolation valve, be tailored to operational circumstances; valve closure times and hydraulic bleed time requirements be in accordance with the approved DWOP; and gas lift valve systems be periodically tested to ensure that they do not exceed specified allowable leakage rates.

Regulatory text changes from the proposed rule—The table in proposed paragraph (b) was revised in the final rule to reflect comments received and to be consistent with the guidance of NTL No. 2009 G–36. BSEE also deleted an extraneous phrase that was inadvertently included in proposed paragraph (b)(1)(i).

Comments and responses—BSEE received public comments on this section and responds to those comments as follows:

Consistency With NTL No. 2011–N11

Comment—A commenter asserted that the tables in proposed §§ 250.873, 250.874 and 250.875 are inconsistent with the tables issued in NTLs, guidance provided via DWOP approvals, and discussions with BSEE GOM Region's Technical Assessment Section. The commenter recommended that BSEE revisit and revise the tables according to NTL No. 2011–N11 and previous guidance issued to operators as part of the DWOP process.

Response—BSEE agrees with the commenter and has revised the tables to be more consistent with the referenced NTL and BSEE guidance provided to operators during the DWOP process. However, not every detail relevant to subsea gas lift systems can be included in the final rule. There are three different gas lift situations, each using a different system, and the nuances for these systems are better addressed in guidance. BSEE plans to revise the referenced NTL to address those details that are not covered in this final rule.

Gas Lift System

Comment—A commenter requested that, for clarity, the word "system" should be added after "gas lift" in the first sentence of paragraph (d). The commenter asked why there was no allowable leakage rate specified for the valve in proposed paragraph (d)(1), given that a gas lift isolation valve (GLIV) is required when gas lifting a subsea pipeline, pipeline riser, or manifold via an external gas lift pipeline, as described in proposed paragraph (b)(1).

Response—BSEE agrees with the commenter's suggestions for revising paragraph (d) by adding the word "system" after "gas lift" in the first sentence. No other changes are necessary, however. Under paragraph (b)(1), the GLIV must be installed downstream of the USV(s) and/or AIV(s). The GLIV prevents flow back to the facility. For gas lift of a subsea pipeline, pipeline riser, or manifold via an external gas lift pipeline, the USV is the primary barrier and is leak tested; the GLIV is not the primary barrier, so a leak test is not required.

Subsea Water Injection Systems (§ 250.874)

Section summary—This is a new section that codifies existing policy and guidance from the DWOP process, related to water flood injection via subsea wellheads. This is similar to the subsea gas lift situation discussed in the previous section. The basic requirements of API RP 14C apply for water flooding from the surface, but BSEE made some clarifications in this section regarding the use of water flood systems for recovery in subsea production operations. Final § 250.874 requires operators to meet the following requirements: Adhere to the WI provisions in API RP 14C for the WI equipment located on the platform; equip the WI system with certain safety valves, including water injection valve (WIV) and a water injection shutdown valve (WISDV); establish valve closure times and hydraulic bleed requirements according to the approved DWOP; and conduct WIV testing in accordance with the rule.

Regulatory text changes from the proposed rule—BSEE revised the introductory paragraph to clarify that the regulations are the minimum requirements for the subsea WI system, that the operator's DWOP must address the applicable requirements, and that the operator must comply with the approved DWOP. BSEE also restructured the section, creating shorter, easier to follow paragraphs.

BSEE revised final paragraph (g) to clarify the testing requirements. In particular, BSEE revised proposed paragraph (g)(2) to address the actions that an operator must take if a designated USV on a WI well fails its test. BSEE retained in the final paragraph the proposed requirement that the operator must designate another certified subsea valve as a USV, in place of the USV that failed its test. However, BSEE added language to clarify that this designation requires District Manager approval. In addition, BSEE removed language from proposed paragraph (g)(2) that would have given the operator the option, in lieu of designating a new certified subsea valve as a USV, to modify the valve closure time of the surface-controlled SSSV or WIV after sensor activation. That situation has never occurred in BSEE's experience; thus, that option is not needed in this regulation.

In consideration of a comment received, the final rule omits language from proposed paragraph (g)(3) that addressed function testing the WISDV in cases where the operator had BSEE's approval not to leak test the WISDV. BSEE has decided that the function testing requirements for WISDVs in such circumstances would be more effectively addressed through other means, such as through a departure approval under § 250.142.

In final paragraph (h)(2), BSEE removed the proposed language stating that the District Manager may order a shut-in when there is a loss of communication during WI operations. The deleted sentences were intended only for informative purposes, not as a regulatory requirement, and thus are not needed in the regulation.

Comments and responses—BSEE received public comments on this section and responds to those comments as follows:

Zero-Leak Criteria

Comment—A commenter asked whether the proposed regulations apply to all WI wells and all WI systems. The commenter asserted that these are 'departing pipelines' from the platform, and that the proposed requirement would be inconsistent with API RP 14C.

The commenter also asserted that some WI wells are not connected directly to the reservoir and will not flow back under hydrostatic pressure or would take many years to do so. The commenter, therefore, questioned whether a 'zero-leak' criterion for these wells would be appropriate. The commenter also asserted that the proposed regulations imply that the consequence of any fluid by-pass is similar or identical to that of a hydrocarbon production system and well, while in many instances the bypasses of WI fluids have neither safety nor environmental consequences. Thus, the commenter questioned whether this same valve leakage criterion should apply.

Response—BSEE disagrees with the commenter, and has determined that no changes are necessary based on this comment. These provisions apply to all WI wells and WI systems. Consistent with existing BSEE policy and guidance previously provided to the operators through the DWOP process, the zero-leak rate for these wells is appropriate, and if the well is capable of natural flow to the surface, then the operator needs to test these valves. Any operator that has concerns with its specific subsea WI system should contact the appropriate District Manager, who will review the concerns on a case-by-case basis.

WIV Testing

Comment—A commenter asserted that, because a WIV is defined in § 250.874(a) as a "water injection valve," and because this definition does not include WISDVs (as defined in § 250.874(b)), the acronym "WIV" as used in proposed paragraphs (g) and (g)(1) should be replaced with the words "water injection system valve." The commenter also suggested, for clarity, that BSEE add the word "leak" to the first sentence of paragraph (g)(3). The commenter questioned whether the requirement that USVs meet the allowable leakage criteria (in the event that the WISDV cannot be tested because the shut-in tubing pressure of the water injection well is less than the external hydrostatic pressure) means that the USVs are to be tested in the direction of the water injection flow. If that is so, the commenter questioned why the WISDV cannot be tested similarly, *i.e.,* in the direction of the flow. The commenter also suggested that BSEE consider the applicability of the proposed requirements and regulations to subsea water injection systems that do not have positive well flowback capability and whether the proposed production valve leakage criteria are necessary for all WI wells and systems.

Response—BSEE agrees with the comment that the acronym "WIV" is not appropriate for use in paragraph (g), as proposed, and has replaced the acronym with "injection valve" in the introductory sentence of paragraph (g) and in subparagraph (g)(1) of the final rule. In addition, based on the commenter's questions and concerns related to the requirement in proposed paragraph (g)(3) for testing a USV in the event that a WISDV cannot be tested, BSEE has decided that there are a number of technical issues related to such testing that require further consideration by BSEE and that potentially would be better addressed through guidance rather than by regulations at this time. Accordingly, BSEE has removed the relevant language in proposed paragraph (g)(3) from the final rule. BSEE may issue additional guidance on WISDV testing at a later date.

Subsea Pump Systems (§ 250.875)

Section summary—This new section codifies policy and guidance from existing NTL No. 2011–N11, "Subsea Pumping for Production Operations," and the DWOP process. Final § 250.875 outlines subsea pump system requirements, including: The installation and location of specific safety valves and sensors, operational considerations under circumstances where the maximum possible discharge pressure of the subsea pump operating in a dead head situation could be greater than the maximum allowable operating pressure (MAOP) of the pipeline, valve closure times and hydraulic bleed times, and subsea pump testing.

Regulatory text changes from the proposed rule—BSEE revised this section to clarify that the operator must ensure that the subsea pump system complies with the approved DWOP, and that the requirements in this section are the minimum requirements for the subsea pump system. BSEE revised the wording in several places to clarify the requirements; however BSEE did not make any substantive changes to the requirements in this section.

Comments and responses—BSEE received public comments on this section and responds to those comments as follows:

Previous Guidance

Comment—A commenter asserted that the tables in the proposed rule are different from previous guidance provided through DWOPs by BSEE GOM Region's Technical Assistance section or NTL No. 2011–N11 ("Subsea Pumping for Producing Operations—Considerations for Using Subsea Gas Lift and Water Flood as Secondary Recovery Methods for Production Operations)." The commenter recommended revising the rule to align with previous guidance issued to operators. The commenter also noted that the proposed rule does not provide the valve closure timing table included as Table 1 in NTL No. 2011–N11 and recommended including the table in the regulation to avoid confusion during the DWOP approval process. The commenter asserted that the "loss of communications" case is addressed in NTL No. 2011–N11, but that the proposed rule did not provide details of how and when to execute an immediate shutdown of a well or subsea boost system. Thus, the commenter requested clarification regarding the shutdown sequence and timing. The commenter also recommended that the tables in the proposed rule be revised to align better with the tables published in the current NTLs.

Response—No changes to this section are necessary in response to these comments. Table 1 from NTL No. 2011–N11, referred to in the comment, is associated with the approval of a specific DWOP. However, the issues associated with that table and these systems are complex, with too many nuances to effectively address in this regulation. Those issues are better addressed through the DWOP process on a case-by-case basis, especially since production systems are site-specific and currently there is no industry standard on subsea pumping. Similarly, under paragraph (d), operators must follow the valve closure times and hydraulic bleed requirements established by their approved DWOPs. Accordingly, BSEE reviews each subsea pumping system individually through the DWOP process. BSEE will review NTL No. 2011–N11 and expects to publish a new NTL consistent with this final rule after the effective date of the final rule.

Subsea Pump Testing

Comment—One commenter indicated that the proposed requirement potentially could be too broad. The commenter acknowledged that certain intervention activities or changes to software and equipment may justify a complete subsea pump function test—including shutdown, but that other, less significant changes might not warrant such a test. The commenter recommended adding the word "significant" to proposed paragraph (e)(1) so that it reads: "Performing a complete subsea pump function test, including full shutdown after any significant intervention, or changes to the software and equipment affecting the subsea pump; and . . .''

Response—BSEE believes that the requirements set forth in paragraph (e)(1) are appropriate and not overbroad under the circumstances; therefore, no changes are necessary at this time. This section deals with newer technology that is still uncommon, and there are currently no well-established industry standards that address how and when function testing of subsea pumps should be conducted. Thus, at present, it is appropriate to require a function test of the subsea pump after any change to software or equipment affecting the subsea pump, whether or not the operator considers the change to be ''significant,'' in order to ensure that the pump will still function as planned after the change. As BSEE and the industry gain experience under this new requirement, BSEE may consider developing further guidance on when function testing is required under this provision.

Fired and Exhaust Heated Components (§ 250.876)

Section summary—This new section requires certain tube-type heaters to be removed and inspected, and repaired or replaced as necessary, every 5 years by a qualified third-party. This section also requires that the operator document the inspection results, retain them for at least 5 years, and make them available to BSEE upon request. This new section was added, in part, due to the BSEE investigation report into the *Vermillion 380* platform fire of September 2010,[25] which determined that ''the immediate cause of the fire was that the heater-treater's weakened fire tube became malleable and collapsed, creating openings through which hydrocarbons escaped, came into contact with a hot burner, and then produced flames.'' The report also stated that a possible contributing cause of the fire was a lack of routine inspections of the fire tube. Since 2011, there have been other similar incidents involving tube-type heaters resulting in potential safety issues for offshore personnel and infrastructure. This new requirement will ensure tube-type heaters are inspected routinely to minimize the risk of tube-type heater incidents.

Regulatory text changes from the proposed rule—In response to comments, BSEE revised the first sentence of this section to clarify that an operator must have the fire tube for tube-type heaters inspected within 2 years after the date of publication of this final rule, and at least once every 5 years thereafter, and then repaired or replaced as needed.

Comments and responses—BSEE received public comments on this section and responds to those comments as follows:

Timing of Initial Inspections

Comment—A commenter asked whether the ''every 5 years'' clock begins the day the proposed regulation is amended or whether the regulation would be retroactive and cause equipment that has not been inspected within the last 5 years to be pulled and inspected.

Response—BSEE revised this section to require the initial inspection within 2 years after the publication of the final rule. The requirement for third-party inspections every 5 years begins to run at the time the initial inspection is completed. This provision is not retroactive.

Safety, Costs, and Benefits for Fire Tube for Inspection

Comment—BSEE received comments that expressed concern about the safety, costs, and benefits related to removing the fire tube for inspection. Commenters indicated that removing the fire tube for inspection requires removing the components and may require a crane, which the commenters asserted would be a potential safety hazard, as well as very costly, and would not add material value to the inspection process. The commenters suggested that BSEE consider alternatives to removing the tube, such as a visual inspection with the tube in place and an option of removing the tube at the qualified third-party inspector's discretion. They recommended that the fired components be inspected at the same interval as their host equipment. They also stated that expected costs of compliance may exceed BSEE's initial projections, since removing the fire tube may require additional equipment and staff and lead to lost production.

Response—No changes to the regulatory text are necessary. These new requirements are based, in part upon BSEE's investigation of the *Vermillion 380* heater-treater ''fire tube'' incident and a related Safety Alert issued after the investigation.[26]

BSEE's investigation into the *Vermillion 380* platform fire of September 2010 determined that the immediate cause of the fire was that the heater-treater's weakened fire tube became malleable and collapsed, creating openings through which hydrocarbons escaped, came into contact with a hot burner, and then produced flames. The report also stated that a possible contributing cause of the fire was a lack of routine inspections of the fire tube. Since 2011, there have been other similar incidents involving tube-type heaters resulting in potential safety issues for offshore personnel and infrastructure. This new requirement will ensure tube-type heaters are inspected routinely to minimize the risk of such tube-type heater incidents. BSEE does not believe that the alternatives suggested by the commenter, such as to removing the tube or inspecting on the same interval as host equipment, would accomplish the purposes of this provision.

BSEE agrees, however, that the costs associated with the inspection of fired and exhaust-heated components may be higher than the initial economic analysis estimated and has adjusted those costs in the final economic impact analysis, as discussed in part V of this document. After considering those costs, however, BSEE has concluded that the balance of relevant safety considerations, and other costs and benefits, justify promulgating this final rule.

Production Safety System Testing (§ 250.880)

Section summary—BSEE moved the contents of existing § 250.804(a), pertaining to production safety system testing, to final § 250.880, and revised those provisions for clarity and plain language. BSEE also added several tables to this section to further clarify its requirements.

Final § 250.880(a) includes the notification requirements from existing § 250.804(a)(12) and requires the operator to notify the District Manager at least 72 hours prior to commencing production so that BSEE may conduct a preproduction inspection of the integrated safety system. The final rule retains the existing requirement to notify the District Manager upon actual commencement of production, and adds a new requirement to notify the District Manager and receive approval before certain types of subsea intervention.

The final rule also retains existing testing and inspection requirements, with certain alterations. The final rule also adjusts the existing requirements by increasing certain liquid leakage rates from 200 cubic centimeters per minute to 400 cubic centimeters per minute and increasing gas leakage rates from 5 cubic feet per minute to 15 cubic feet per minute. These changes are consistent with industry standards and account for accessibility of equipment in deepwater/subsea applications. In 1999, the former MMS funded the Technology Assessment and Research Project #272, "Allowable Leakage Rates and Reliability of Safety and Pollution Prevention Equipment," to review increased leakage rates for safety and pollution prevention equipment. One of the recommendations from this study by the Southwest Research Institute (SWRI) states that: "There appears to be preliminary evidence indicating that more stringent leakage requirements specified in part 250 may not significantly increase the level of safety when compared to the leakage rates recommended by API. However, a complete hazards analysis should be conducted, and industry safety experts should be consulted." (*See* n. 20, *supra.*) In the past, BSEE has allowed a higher leakage rate than that prescribed in existing § 250.804 as an approved alternate compliance measure in the DWOP because of BSEE's and industry's acceptance of the "barrier concept," which moves the SSV from the well to the BSDV, and which has been proven to be as safe as or safer than what was required by the existing regulations.

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[25] BSEE's investigation report, ''*Vermillion* Block, Production Platform A: An Investigation of the September 2, 2010 Incident in the Gulf of Mexico, May 23, 2011,'' is available at *https://www.bsee.gov/sites/bsee.gov/files/vermilion-investigation.pdf.*

[26] Safety Alert 009 (May 25, 2011) summarized the results of the *Vermillion 380* investigation and recommended, among other things, that operators evaluate, and where necessary, update or develop their inspection plans for heater-treaters and regularly inspect heater-treaters. The Safety Alert is available at *http://www.bsee.gov/Regulations-and-Guidance/Safety-Alerts/009-Safety-Alert/.*

The following table compares existing allowable leakage rates to the final increased allowable leakage rates for various safety devices:

Item name	Allowable leakage rate testing requirements under existing regulations	The increased allowable leakage rate testing requirements under the final rule
Surface-controlled SSSVs (including devices installed in shut-in and injection wells).	liquid leakage rate < 200 cubic centimeters per minute, or gas leakage rate < 5 cubic feet per minute.	liquid leakage rate < 400 cubic centimeters per minute, or gas leakage rate < 15 cubic feet per minute.
Tubing plug.	liquid leakage rate < 200 cubic centimeters per minute, or gas leakage rate < 5 cubic feet per minute.	liquid leakage rate < 400 cubic centimeters per minute, or gas leakage rate < 15 cubic feet per minute.
Injection valves.	liquid leakage rate < 200 cubic centimeters per minute, or gas leakage rate < 5 cubic feet per minute.	liquid leakage rate < 400 cubic centimeters per minute, or gas leakage rate < 15 cubic feet per minute.
USVs.	0 leakage rate.	liquid leakage rate < 400 cubic centimeters per minute, or gas leakage rate < 15 cubic feet per minute.
Flow safety valves (FSV).	liquid leakage rate < 200 cubic centimeters per minute, or gas leakage rate < 5 cubic feet per minute.	liquid leakage rate < 400 cubic centimeters per minute, or gas leakage rate < 15 cubic feet per minute.

Additionally, final § 250.880 contains new requirements for BSDVs, changes the testing frequency for underwater safety valves, and adds requirements for the testing of ESD systems, flame, spark, and detonation arrestors, as well as pneumatic/electronic switch LSH and level safety low (LSL) controls. This final section also adds testing and repair/replacement requirements for subsurface safety devices and associated systems on subsea trees and for subsea wells shut-in and disconnected from monitoring capability for greater than 6 months.

Regulatory text changes from the proposed rule—BSEE revised paragraph (a)(1) to clarify that notification to BSEE is required before production begins so that BSEE can conduct a preproduction inspection. BSEE revised the proposed requirements in the tables under paragraph (c) to express the allowable leakage rates in "standard cubic feet per minute" instead of "cubic feet per minute." This is consistent with industry practice and with API RP 14B, which is referenced in paragraph (c). BSEE also revised several sentences in paragraph (c) for clarity and to provide consistency in the language regarding timing of the tests. In addition, BSEE revised paragraph (c)(2)(i) to clarify that the main valve piston must be lifted during the required test.

Paragraph (c)(2)(iv) was revised to add "gas and/or liquid" before "fluid flow" for consistency with other provisions of the final rule and to clarify that the reference applies to all fluid flow.

Based on consideration of relevant comments, BSEE also revised final paragraph (c)(2)(v) to clarify the meaning of "flowline" FSVs and to remove the references to appendix D, section D4, table D2, and subsection D of API RP 14C (while retaining the requirement to use the test procedure in API RP 14C).

As suggested by comments, BSEE revised paragraph (c)(3)(ii) to include ''gas'' detection systems. BSEE added a statement in final paragraph (c)(3)(iii)(A) to clarify that the operator must test all stations for functionality at least once each calendar month, not to exceed 6 weeks between tests, and that no station may be reused until all stations have been tested. This revision ensures proper testing of the ESD stations. Similar changes were made, with different timeframes, to paragraphs (c)(3)(iii)(B) and (C).

BSEE restructured proposed paragraph (c)(5), renumbered it as paragraph (d), and revised and reworded many of the subordinate paragraphs for clarity.

BSEE also moved the provision that limits the time (*i.e.,* 24 months) that a completed subsea well may be disconnected from monitoring capability from proposed paragraph (c)(5)(vi) to final paragraph (d)(1).

Subsequent paragraphs were renumbered and revised for clarification. Several paragraphs were also separated into short subparagraphs. BSEE made these changes to make the requirements easier to read and understand. However, BSEE did not make any substantive changes to the requirements in this section.

Comments and responses—BSEE received public comments on this section and responds to the comments as follows:

Allowable Leakage Rate for Undersea Production Systems

Comment—BSEE received comments concerning changes to the allowable leakage rate for undersea production systems and BSEE's reasoning for proposing to raise those rates. Multiple commenters mentioned that BSEE based its proposed decision to raise the allowable leakage rate partly on the SWRI report on Project #272. (*See* n. 20, *supra*). The commenters asserted that the report recommended conducting a full hazard study, but that the proposed rule did not provide results of that study or indicate that it had been completed. The commenters requested additional technical justification for BSEE's decision. Other commenters suggested that a safety system with leaks should not be allowed at all, asserting that ''[p]roduction safety systems that leak should not pass a safety test'' and ''[c]ritical production safety systems should not leak.''

Response—BSEE disagrees with the suggestion that the proposed decision on leakage rates was based solely on SWRI report #272. BSEE based its decision to increase allowable leakage rates in production systems on several factors, including industry standards (such as API RP 14B), consistency with prior DWOP approvals, and the SWRI report #272.

BSEE also disagrees with the suggestion that it should not allow any leaking valves as part of an approved safety system. This section specifies the allowable leakage rates for valves that are part of a closed system within the production safety system. There are certain critical valves, such as the BSDV, that cannot have any leakage. There are other valves, however, for which some leakage is allowable. For example, BSEE is increasing the allowable leakage rates on SSSVs, as they are part of a closed safety system, designed to diminish the risk of oil spills by stopping the flow within the system in the event that the riser is damaged. The allowable leakage from SSSVs is contained within the closed system; it is not released into the environment. In addition, these new rates are consistent with accepted industry standards.

Testing Flowline FSVs

Comment—A commenter noted that proposed § 250.880(c)(2) included testing requirements for surface valves. In particular, proposed paragraph (c)(2)(v) would have required testing once each calendar month, not to exceed 6 weeks between tests, and would have also required that all FSVs be tested in accordance with the test procedure specified in API RP 14C, Appendix D, section D4, table D2 subsection D. The commenter asserted that, while this section in API RP 14C appears to apply to flowline FSVs, the proposed regulation was not clear, since it stated that the testing requirements would apply to ''surface valves,'' including PSVs, Automatic inlet SDVs actuated by a sensor on a vessel or compressor, SDVs in liquid discharge lines and actuated by vessel low-level sensors, and SSVs. Thus, the commenter asserted that this proposed provision would have applied the specific API RP 14C procedure to surface valves throughout the production process and not just valves covered by section A–1 of API RP, 14C which pertains to ''Wellheads and Flowlines.'' The commenter suggested that, if BSEE intended the proposed testing requirements to apply to ''flowline'' FSVs, then BSEE should insert ''flowline'' before ''FSVs'' in paragraph (c)(2)(v).

Response—BSEE agrees with the substance of this comment and has revised final paragraph (c)(2)(v) to clarify that it applies to flowline FSVs and that flowline FSVs are the only FSVs that must be leak tested under this provision.

Fire- (Flame, Heat, or Smoke) Detection System Testing

Comment—A commenter suggested that BSEE revise proposed § 250.880(c)(3) requirements for fire detections systems to refer to: ''Fire (flame, heat, or smoke) and Gas (combustible) detection systems'' or that BSEE include a separate item (ix) for combustible gas detection. In addition, the commenter suggested that BSEE remove the proposed requirement that all combustible gas-detection systems must be calibrated every 3 months from proposed paragraph (c)(3)(ii) and move that provision to a separate paragraph on combustible gas detection.

Response—BSEE agrees with the commenter's point that there could have been some confusion between the item names and the testing requirements in paragraph (c)(3)(ii) with regard to gas detection systems. However, instead of adopting all of the changes suggested by the commenter, BSEE revised the item name for final paragraph (c)(3)(ii) to include ''gas detection.'' This is consistent with API RP14C; and BSEE added the reference to gas detection systems in this paragraph of the final rule to emphasize the need to test those systems.

3-Barrier Concept for Undersea Valves

Comment—BSEE received multiple comments regarding the 3-barrier concept for undersea valves. The commenters expressed concern that the proposed language would not allow sufficient flexibility for compliance. They asserted that some subsea well may not be equipped with more than one USV or an additional tree valve that could serve in that capacity and that not all tree designs can test multiple barriers.

Response—No changes are necessary. BSEE is not aware of any subsea trees that do not have a second USV. Under final paragraph (d) of this section, the 3 pressure barriers are only required in subsea wells that are shut-in and disconnected from monitoring capability for more than 6 months.

Pumps for Firewater Systems

Comment—A commenter stated that the proposed rule referred to an inspection requirement that is not included in the existing regulations. The commenter asserted that, under the existing regulations, pumps for firewater systems were required to run and be tested for operation and pressure on a weekly basis, while the proposed rule would add an annual inspection for pump performance (flow volume and delivery pressure) to ensure the pump system satisfies the system design requirements. The commenter asserted that BSEE had not identified the rationale for this added inspection or any benefit that it would produce. The commenter recommended that this section be deleted in its entirety until BSEE fully evaluated the content of API RP 14G and the potential value of this requirement.

Response—No changes are necessary based on this comment. In this section, BSEE is not referencing the entire API RP 14G standard; this provision only refers to section 7.2 of the standard. This annual inspection requirement was added to ensure that the firewater pumps are in good working condition since they are a crucial part of the fire safety system. API RP 14G, section 7.2 provides the appropriate details to ensure that the pump inspection is adequate.

Drilling Vessel in the Field or Readily Accessible

Comment—A commenter asserted that proposed paragraph (c)(5)(v) was confusing and seemed excessive since BSEE had not identified the need for having a drilling vessel "readily available or in the field." The commenter suggested that BSEE clarify the intent of this proposed rule. The commenter also suggested that BSEE clarify the definition of "in the field or readily accessible" in paragraph (c)(5)(v) and that BSEE should determine that rigs should not have to be under direct contract to be considered "readily accessible." In addition, the commenter asserted that it is also unclear under what circumstances a "drilling vessel" would be required to intervene in a shut-in well that is disconnected from monitoring capability. The commenter stated that maintaining a rig on standby would not be cost-effective (although the commenter provided no details to support that assertion). The commenter recommended revising paragraph (c)(5)(v) to read: "The designated operator/lessee must ensure that a drilling vessel capable of intervention into the disconnected well must be available to the operator for use should the need arise until the wells are brought on line."

Response—No changes are necessary based on this comment. The regulation states that the drilling vessel must be "in the field or readily accessible." This means that a rig needs to be reasonably available; the rule does not state or imply that the drilling vessel must be under direct contract to be considered readily accessible. The regulation is intended to require that an operator have a rig reasonably available that can respond in a reasonable timeframe, and this is only required for subsea wells that are shut-in and disconnected from monitoring capability for periods greater than 6 months. This provision requires this precaution in order to reduce the risks that a prudent operator is reasonably likely to encounter in the event that other safety systems on the well fail.

BSDV Leakage Rates

Comment—A commenter suggested clarifying proposed § 250.880(c)(4)(iii), regarding testing of BSDVs, by inserting the words "and BSDVs" in the third sentence in that paragraph so that it reads: "You must test according to API RP 14H for SSVs and BSDVs (incorporated by reference as specified in § 250.198)." The commenter also suggested revising the next sentence in that paragraph by replacing the phrase "if any fluid flow is observed during the leakage test" with "if fluid leakage exceeding the criteria specified in API RP 14H is observed during the leakage test . . .".

Response—No changes are necessary based on this comment. The BSDV is the surface equivalent of an SSV on a surface well and is critical to ensuring the safety of personnel on the facility as well as protection of the environment. Because the BSDV is a critical component of the subsea system, it is necessary that this valve has rigorous testing criteria. Thus, the BSDV cannot have any fluid flow during the leakage test.

Records (§ 250.890)

Section summary—BSEE has moved the contents of existing § 250.804(b), specifying the records for installed safety devices that operators must maintain, to final § 250.890 and revised the contents for greater clarity and use of plain language. The final rule also codifies new information requirements, as proposed, to assist BSEE in contacting operators.

Regulatory text changes from the proposed rule—The term "platforms" was changed to "facilities" in paragraph (c), and the term "person in charge" was changed to "primary point of contact for the facility" in paragraph (c)(2).

Comments and responses—BSEE received public comments on this section and responds to those comments as follows:

Designated Person in Charge

Comment—One commenter questioned whether the proposed rule would require a facility owner to report a change in the "designated person in charge" of welding—as specified in §§ 250.111 and 250.113—or a change of the "designated person in charge" as required by USCG regulations. The commenter also asked whether the proposed rule would require a facility owner who designates a separate "person in charge" for each of the day and night shifts to submit two reports daily.

Response—BSEE agrees that the proposed language in paragraph (c) was somewhat unclear, and has revised this provision in the final rule to clarify that the person referred to is the "primary point of contact" for the facility, who must be included on the facility's contact list. This section ensures that BSEE has a way to contact the facility, when needed, and does not require daily reporting to BSEE. The operator is required to update this list annually and whenever the contact information changes.

Facility Instead of Platform

Comment—A commenter requested clarification of the term "platform" as used in proposed paragraph (c). The commenter asked whether that term includes FPSs, FPSOs, TLPs, and MODUs. The commenter also requested clarification on the responsibilities for MODU owners and lease operators for submitting the required contact information if this section does consider MODUs to be platforms.

Response—BSEE agrees that the use of the word "platforms" in paragraph (c) could cause some confusion, so we replaced that term with the word "facilities" in the final rule. For purposes of this paragraph, facilities include FPSs, FPSOs, and TLPs.

Confirming Compliance

Comment—A commenter asserted that this proposed section included no method for BSEE to confirm compliance. The commenter recommended that BSEE consider third-party oversight in the form of an annual inspection of records or spot-checks of material maintenance and management programs. The commenter suggested that BSEE could use the proposed rule section to create positive reinforcement mechanisms.

Response—No changes are necessary based on this comment. BSEE has confidence in its inspection program's ability to confirm compliance. BSEE's inspectors confirm that the operators are in compliance with BSEE regulations through a number of methods, including verifying records and documentation. (*See, e.g.*, § 250.132(b)(3).) Thus, the third-party approach recommended by the commenter would appear to be less thorough than BSEE's current inspection program. In the future, BSEE may consider additional ways to verify documentation and confirm compliance.

Safety Device Training (§ 250.891)

Section summary—The final rule recodifies existing § 250.805, pertaining to training for personnel who install, inspect, test, and maintain safety devices and for personnel who operate production facilities as final § 250.891. The wording of this section was changed to more accurately capture the scope of subpart S training requirements.

Regulatory text changes from the proposed rule—BSEE added a reference to subpart O, in addition to the reference to subpart S.

Comments and responses—BSEE received public comments on this section and responds to those comments as follows:

Referencing Subparts O and S

Comment—A commenter questioned whether it was BSEE's intent to remove the prescriptive training requirements of subpart O and replace them with the performance-based requirements of subpart S. If so, the commenter suggested that portions of subpart O should be revoked; if not, the commenter suggested that subpart O as well as subpart S should be referenced.

Response—BSEE agrees with the commenter's suggestion about referring to subpart O in this section. Accordingly, BSEE has changed the section to require that personnel installing, repairing, testing, maintaining, and operating surface and subsurface safety devices, and personnel operating production platforms, be trained according to the procedures in subpart O and subpart S. The requirements of subpart O are not affected by this rule; likewise subpart S neither replaces nor supersedes the requirements in subpart O. Rather, those two subparts complement each other. Subpart S provides the general requirements for training, and subpart O provides more detailed training requirements for well control and production safety. If the operator complies with subpart O, then that operator also meets some of the training requirements for subpart S.

Mandatory Training

Comment—One commenter asserted that it is important to human and environmental health that oil and gas production companies understand all the requirements and components associated with drilling, and have an effective quality management system in place. The commenter suggested that initial and periodic training sessions be mandatory for all oil and gas production operations employees, and that personnel be properly trained and qualified to perform their assigned functions, in accordance with subpart O.

Response—No changes to this section are needed in response to this comment. Given the multitude of different jobs associated with offshore production, it is impractical for this rule to establish specific training requirements for each job. However, BSEE regulations under subpart S require operators to address appropriate personnel training through their SEMS plans. SEMS requires everyone who works offshore to be "trained in accordance with their duties and responsibilities to work safely and are aware of potential environmental impacts." § 250.1915. In addition, subpart O provides some specific requirements for training. Among other subpart O requirements, § 250.1503(a) requires operators to implement training programs so that all employees can competently perform their assigned duties, including well control and production safety duties. By requiring operators to ensure that their personnel are trained in accordance with the procedures in subparts O and S, final § 250.891 substantially satisfies the commenter's concern that only qualified personnel perform production operations functions.

Subpart O

Comment—While recognizing the intent behind the proposal to move training from the subpart O requirements to subpart S, one commenter asserted that subpart O is still valid, since it has not been withdrawn from the regulations. The commenter stated that subpart O offers more detail on training program requirements, compared to subpart S, and it is an established basis for all operators' production safety systems and well control training programs. The commenter also asserted that the proposed rule would impose detailed requirements on the operator that are neither specifically required under subpart S nor recommended in API RP 75 (Recommended Practice for Development of a Safety and Environmental Management Program for Offshore Operations and Facilities). The commenter recommended that BSEE revise this section to reflect subpart O and not subpart S.

Response—BSEE largely agrees with the commenter's statements concerning the continued applicability of subpart O training requirements for personnel performing functions covered by this final rule. Proposed § 250.891 was not intended to override subpart O; nor does subpart S replace or supersede the requirements in subpart O. As already discussed, the two subparts complement each other, in general and as applied to subpart H. For that reason, BSEE disagrees with the commenter's suggestion that § 250.891 should not refer to subpart S. To provide additional clarity on these point, BSEE revised final § 250.891 to expressly refer to subpart O as well as subpart S.

V. Procedural Matters

Regulatory Planning and Review (E.O. 12866 and E.O. 13563)

E.O. 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant regulatory actions. A significant regulatory action is one that is likely to result in a rule that:

- Has an annual effect on the economy of $100 million or more, or adversely affects in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;
- Creates serious inconsistency or otherwise interferes with an action taken or planned by another agency;
- Materially alters the budgetary impacts of entitlement grants, user fees, loan programs, or the rights and obligations of recipients thereof; or
- Raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

BSEE has concluded, and OIRA has determined, that this rule is not a significant action under E.O. 12866. In particular, BSEE has concluded, and OIRA has determined, that this final rule will not have an annual economic impact of $100 million or more and will not have a material adverse effect on the economy, the environment, public health or safety, or governmental communities. In support of that determination, BSEE prepared an economic analysis to assess the anticipated costs and potential benefits of the rulemaking. The following discussions summarize the final economic analysis; a complete copy of the final economic analysis can be viewed at *www.Regulations.gov* (use the keyword/ID "BSEE–2012–0005").

1. Need for Regulation

As discussed in part II of this document, BSEE identified a need to amend and update the oil and gas production safety system regulations in subpart H. The regulations address such issues as production safety systems, subsurface safety devices, and safety device testing. These systems play a critical role in protecting workers and the environment.

Subpart H has not had a major overhaul since it was first published in 1988. Since that time, much of the oil and gas production on the OCS has moved into deeper waters, and the industry has developed and begun employing new technologies, including: Foam firefighting systems; subsea pumping, water flooding, and gas lift; and new alloys and equipment for high temperature and high pressure wells. The subpart H regulations, however, have not kept pace with the technological advancements. Many of the new provisions in the final rule serve to incorporate and codify current industry practices. In addition, the final rule restructures and reorganizes subpart H into shorter, easier-to-read sections and highlights important information for regulated entities. Thus, the final rule will greatly improve the readability and understanding of the production safety system regulations.

2. Regulatory Alternatives Considered by BSEE

In developing this final rule, BSEE considered two major alternatives (in addition to the numerous specific choices previously described in parts III and IV): (1) Make the regulatory changes contained in this final rule; or (2) take no regulatory action and continue to rely on the current regulations, first promulgated in 1988, in combination with the conditions imposed by subsequent permits and plans (*i.e.*, DWOPs), guidance provided to operators in NTLs and other documents, and voluntary compliance by operators with relevant industry standards. However, relying on specific plan and permit decisions and on guidance documents does not optimize regulatory certainty for the regulated industry. In addition, relying on voluntary compliance with industry standards does not ensure, or provide BSEE with adequate means to ensure, that all operators are performing adequately.

BSEE has elected to move forward with alternative 1 and finalize this rule, which codifies existing guidance and relevant standards and best industry practices. This alternative will provide industry with regulatory certainty, as well as with an appropriate balance of prescriptive and flexible, performance-based requirements. It will also provide BSEE with the necessary means to ensure that production safety systems will improve safety and environmental protection on the OCS, resulting in the other benefits described in this summary and the full economic analysis. Alternative 2 would be less costly, but would not provide those benefits to industry or the public.

3. Summary of Economic Analysis

BSEE derived its estimates by comparing the costs and benefits of the new provisions in the final rule to the baseline in accordance with the guidance provided in OMB Circular A–4. In the baseline, BSEE includes costs and benefits of the final rule that already occur as a result of the existing BSEE regulations, industry guidance documents, industry-developed standards and other accepted industry practices with which industry already complies.[27]

The analysis identified a total of 18 provisions that will result in changes from the baseline, which are listed in Table 1 below, categorized by the size of the cost that they impose on industry. The size categories were defined as follows: ‘‘Major Costs’’ being costs of at least $1,000 per firm per year, on average as estimated; ‘‘Minor Costs’’ being less than $1,000 and greater than $100 per firm per year; and ‘‘Inconsequential Costs’’ being less than $100 per firm per year. The number of offshore operators is 99. The cost per firm does not include costs to BSEE (which accounted for only about 0.5 percent of all costs of all provisions). As shown in Table 1, the distribution of costs by provision is extremely skewed, with one of the 18 provisions (specifically, § 250.876, ‘‘Fired and Exhaust Heated Components’’) accounting for over 96 percent of all costs to industry from the rule (about $45,000 per firm per year).

Thus, there is only 1 major cost provision of the final rule. There are 7 minor cost provisions (ranging, on average, from $110 to $576 per firm per year), and 10 inconsequential cost provisions (ranging from $2 to $77 per firm per year). The inconsequential costs, in total, account for only $185 per firm per year, or less than 0.4 percent of the cost of the rule to industry.

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[27] BSEE's approach to setting the economic baseline in this final rule is consistent with the approach used for the economic analysis of the recent Well Control and Blowout Preventer Systems final rule. (*See, e.g.*, 81 FR 25985.) The economic analysis for the recent Exploratory Drilling on the Arctic OCS final rule used a similar but more conservative approach to determine baseline costs because of the unique characteristics and remote nature of exploratory drilling operation on the Arctic OCS. (*See, e.g.*, 81 FR 46543.)

Accordingly, the cost estimate in the final economic analysis for the Arctic rule included costs related to some requirements that otherwise could have been included in the economic baseline. (*See* 81 FR 46543–46550.).

Table 1. Distribution of Provisions by Type of Cost

Type of Cost	#	Provision	Annual Cost to Industry and BSEE	Cost Per Firm	Percent of Total Costs Per Firm
Major Costs	1	Inspection of fired and exhaust heated components	$ 4,500,000	$ 45,455	96.18
Minor Costs	2	Inspection, testing, and certification of foam firefighting systems	$ 57,014	$ 576	1.22
	3	Approval of temporary quarters and equipment	$ 38,255	$ 281	0.59
	4	Submission of contact lists for OCS platforms	$ 24,301	$ 137	0.29
	5	Certification letters for mechanical and electrical systems installed in accordance with approved designs	$ 18,086	$ 176	0.37
	6	Certification of as-built diagrams and piping and instrumentation diagrams	$ 17,576	$ 162	0.34
	7	Certification for designs of mechanical and electrical systems	$ 17,464	$ 176	0.37
	8	SPPE compliance documentation	$ 10,915	$ 110	0.23
Inconsequential Costs	9	Industry familiarization with the new rule	$ 7,632	$ 77	0.16
	10	SPPE failure reporting procedures	$ 6,618	$ 66	0.14
	11	Requests for exceptions to BAST requirements	$ 910	$ 9	0.02
	12	Changes after approval of chemical firefighting systems	$ 888	$ 8	0.02
	13	Notification of specified production safety issues	$ 734	$ 6	0.01
	14	Emergency action and safety system shutdown	$ 629	$ 2	0.00
	15	Approval for subsea water injection during loss of communication	$ 627	$ 5	0.01
	16	District Manager approval requests	$ 455	$ 5	0.01
	17	Maintenance of as-built piping and instrumentation diagrams	$ 396	$ 4	0.01
	18	Pressure safety low sensor documentation requirements	$ 273	$ 3	0.01
		TOTAL	**$ 4,702,771**	**$ 47,259**	**100.00**

The single major cost provision, § 250.876, will require the fire tube for certain tube-type heaters to be removed and inspected, every 5 years by a qualified third-party. In addition, if removal and inspection indicate tube-type heater deficiencies, operators must complete and document repairs or replacements. Inspection results must be documented, retained for at least 5 years, and made available to BSEE upon request.

BSEE estimates that there are approximately 1,500 fired and exhaust heated components on the OCS that will need to be inspected every 5 years. Based on comments submitted on the proposed rule and the experience of BSEE subject matter experts, the cost associated with each component inspection is estimated to be approximately $15,000. We estimated the average number of component inspections to be 300 per year, resulting in an annual cost to industry of $4.5 million for inspection of fired and exhaust heated components.

Table 2 summarizes the total cost for the final rule over 10 years (2016–25) by types of costs, both undiscounted and discounted (using 3 and 7 percent rates).

Table 2. Total Costs of Rule Over Ten Years (2016-2025), Undiscounted and Discounted
(Thousands of 2016 Dollars)

Type of Costs	10-Year Industry Cost	10-year Government Cost	10-Year Total Cost
Major Cost: Inspection of fired and exhaust heated components (undiscounted)	$45,000	$0	$45,000
Minor Costs (undiscounted)	$1,603	$233	$1,836
Inconsequential Costs (undiscounted)	$183	$8	$192
Total Undiscounted	$46,787	$241	$47,028
Total Discounted 3 Percent Annually			$40,268
Total Discounted 7 Percent Annually			$33,368

The final rule will benefit society (including both the general public and the industry) in two ways: (1) By reducing the probability of incidents resulting in oil spills and worker injuries, and the severity of such incidents if they occur; and (2) by generating cost savings through an increase in allowable leakage rates for certain safety valves under final § 250.880, which reduces the need (and therefore the costs) to replace or repair such valves, (without resulting in oil released into the environment, as previously explained in part IV.C of this document). BSEE has also determined that this provision poses no economic costs to the regulated industry, so its potential economic impact on that industry is only beneficial (due to the potential costs savings).

With respect to oil spills and injuries, however, the magnitude of the potential benefits is uncertain and highly dependent on the actual reductions in the probability and severity of oil spills and injuries that the final rule will achieve.

Due to this uncertainty, BSEE could not perform a standard cost-benefit analysis to estimate the net benefits of the final rule. As is common in situations where regulatory benefits are highly uncertain, we conducted a break-even analysis following OMB guidance in Circular A–4. Break-even analysis estimates the minimum risk reduction that the final rule will need to achieve for the rule to be cost-beneficial. This minimum risk reduction is calculated by dividing the total net costs of a regulation by the costs of incidents the regulation is expected to avoid. For this analysis, the total net costs are calculated by subtracting the equipment cost savings associated with increased allowable leakage rates and safety valves from the total cost of the rule. BSEE divided the total net costs by the costs associated with oil spills and injuries that the regulation might prevent to calculate the break-even risk reduction level.

To analyze potential reductions in oil spills that might result from the final rule, BSEE used data on spill incidences on OCS facilities from the BOEM OCS Case Study.[28] BSEE's analysis resulted in a potential avoided cost from the final rule of $14.9 million (3,995 barrels × $3,720 per barrel of oil spilled).

A similar procedure was used to estimate the level of benefits resulting from potentially avoided injuries. (Avoided fatalities were not considered because BSEE determined that there were no past fatalities that could be directly connected to the provisions related to the final rule.) Table 3 presents estimated injury levels (for all BSEE Regions where there has been production activity from 2007 through 2013), which we then used to calculate an annual estimated average number of injuries (214). These injury levels were estimated based on the numbers of past injuries reported to BSEE (or MMS) by facilities that would be affected by the rule. (These estimates are explained in greater detail in the final economic analysis document in the regulatory docket.)

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[28] Source: United States Department of the Interior, Bureau of Ocean Energy Management, 2012. "Economic Analysis Methodology for the Five Year OCS Oil and Gas Leasing Program for 2012–2017." BOEM OCS Study 2012–2022. *http://tinyurl.com/zqr68kq.*

Table 3. Estimated Number of Injuries Per Year

Year	Gulf	Pacific	Total*
2007	299	12	311
2008	225	10	235
2009	202	11	213
2010	193	8	202
2011	151	13	163
2012	179	24	203
2013	160	15	175
Total	1,408	93	1,501
Annual Average	201	13	214

*Note: The totals per year do not always add because of rounding.

We then used that annual average to estimate the number of injuries that could potentially be avoided by the final rule. BSEE then estimated the corresponding benefits by multiplying the average annual number of avoided injuries (214) by the values ascribed to injuries in previous BSEE regulatory analyses (about $47,000 per injury). These calculations resulted in an annual average of potential avoided cost of injuries of $10.1 million, and potential avoided costs from both spills and injuries of roughly $25.0 million. (*See* Table 4.)

Table 4. Estimation of the Potential Consequences from Incidents

Type of Incident	Average Number Per Year	Cost Per Barrel or Per Injury (thousands of 2016 dollars)	Avoidable Cost (millions of 2016 dollars)
Barrels of Oil Spilled	3,995	$3.7	$14.9
Injuries	214	$47.2	$10.1
Total Potential Annual Avoided Cost			$25.0
Total 10-year Cost of Potential Consequences (Undiscounted)			$249.8
Total 10-year Cost of Potential Consequences (3 percent Discounting)			$219.5
Total 10-year Cost of Potential Consequences (7 percent Discounting)			$187.8

In addition to estimating the break-even risk reduction level (*see* discussion and Table 5 below), BSEE used a risk-based approach to cost-benefit analysis to estimate the potential net benefits of the final rule over a range of possible risk reduction levels. Risk-based cost-benefit analysis involves estimating net benefits over a range of risk reduction levels that the regulation could achieve.

Using the estimated costs, cost savings, and potential benefits (in terms of avoided costs of oil spill incidents) of the final rule, BSEE calculated the break-even risk reduction level using discount rates of 3 and 7 percent over a period of 10 years.

As presented in Table 5, the break-even risk reduction level is 12.7 percent (undiscounted), 12.2 percent (3 percent discount rate), and 11.6 percent (7 percent discount rate). At these levels of risk reduction, there would be between 25 and 27 fewer injuries each year. This result demonstrates that a relatively small reduction in the risk of oil spill incidents on affected OCS facilities will be needed for the final rule to be cost-beneficial.

Table 5. Estimation of the Break-even Risk Reduction Level (10 Years)

	Undiscounted	3 percent Discount Rate	7 percent Discount Rate
	(millions of 2016 dollars)		
Total Cost	$47.0	$40.3	$33.4
Total Cost Savings	$15.4	$13.5	$11.6
Net Costs	$31.6	$26.7	$21.8
Potential Avoided Consequences of an Oil Spill	$249.8	$219.5	$187.8
Break-Even Risk Reduction Level	**12.7 percent**	**12.2 percent**	**11.6 percent**

For the second set of benefits, identified as a cost savings to industry, BSEE estimated a net cost (total cost minus total savings) for the final rule. To estimate the potential cost savings to operators from no longer needing to repair or replace certain safety valves as often as under the existing rules, due to higher allowable leakage rates under the final rule, BSEE used data from inspection records for OCS facilities affected by the rule. Of the active wells on the OCS, there have been, on average, 57 occurrences per year of valve repair or replacement associated with the existing allowable leakage rates that could be affected by the increased allowable leakage rates under the final rule. Based on comments submitted on the proposed rule and on the experience of BSEE subject matter experts, we estimated that the potential costs from the repair or replacement of the safety valves would be $22,000 in labor costs and an additional $5,000 in equipment replacement costs per repair/replacement. Thus, BSEE estimated the annual avoided costs from increasing the allowable leakage rates for certain valves to be approximately $1.54 million, based on an estimated average of 57 repairs or replacements avoided per year.

After consideration of all of the potential impacts of this final rule, as described here and in the final economic analysis, BSEE has concluded that the societal benefits of the final rule justify the societal costs.

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires agencies to analyze the economic impact of regulations when there is likely to be a significant economic impact on a substantial number of small entities and to consider regulatory alternatives that will achieve the agency's goals while minimizing the burden on small entities. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the regulation will not have a significant economic impact on a substantial number of small entities. Further, the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, (March 29, 1996), as amended, requires agencies to produce compliance guidance for small entities if the rule has a significant economic impact on a substantial number of small entities.

For the reasons explained in this section, BSEE has determined that the rule is not likely to have a significant economic impact on a substantial number of small entities and, therefore, that a regulatory flexibility analysis for the final rule is not required by the RFA. Nonetheless, we have included the equivalent of a final regulatory flexibility analysis to assess the impact of this rule on small entities, which is included in the full economic analysis available in the public docket for this rulemaking at *www.regulations.gov.*

Small Business Regulatory Enforcement Fairness Act

The rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act, Public Law 104–121, (March 29, 1996), as amended. This rule:

1. Will not have an annual effect on the economy of $100 million or more. This rule revises the requirements for oil and gas production safety systems. The changes will not have a significant impact on the economy or any economic sector, productivity, jobs, the environment, or other units of government. Most of the new requirements are related to inspection, testing, and paperwork requirements, and will not add significant time to development and production processes. The complete annual compliance cost for each affected small entity is estimated at $8,183.

2. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

3. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The requirements will apply to all entities undertake oil and gas production operations on the OCS.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of BSEE, call 1–888–734–3247. You may comment to the Small Business Administration (SBA) without fear of retaliation. Allegations of discrimination/retaliation filed with the SBA will be investigated for appropriate action.

Unfunded Mandates Reform Act of 1995

This rule will not impose an unfunded mandate that may result in State, local, or tribal governments or in private sector expenditures, in the aggregate, of $100 million or more in any one year. The rule will not have a significant or unique effect on State, local, or tribal governments. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings Implication Assessment (E.O. 12630)

Under the criteria in E.O. 12630, this rule does not have significant takings implications. The rule is not a governmental action capable of interfering with constitutionally protected property rights. A Takings Implications Assessment is not required.

Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this rule does not have federalism implications. This rule will not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this rule will not affect that role. A Federalism Assessment is not required.

BSEE has the authority to regulate offshore oil and gas production. State governments do not have authority over offshore oil and gas production on the OCS. None of the changes in this rule will affect areas that are under the jurisdiction of the States. It will not change the way that the States and the Federal government interact, or the way that States interact with private companies.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

1. Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors, ambiguity, and be written to minimize litigation; and
2. Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contains clear legal standards.

Consultation With Indian Tribes (E.O. 13175)

Under the Department's tribal consultation policy and under the criteria in E.O. 13175, we have evaluated this rule and determined that it has no substantial direct effects on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required.

Paperwork Reduction Act (PRA) of 1995

This rule contains a collection of information that was submitted to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The title of the collection of information for this rule is 30 CFR 250, subpart H, *Oil and Gas Production Safety Systems.* The OMB approved the collection under Control Number 1014–0003, expiration August 31, 2019, containing 95,997 hours and $5,582,481 non-hour cost burdens. Potential respondents comprise Federal OCS oil, gas, and sulfur operators and lessees. Responses to this collection of information are mandatory or are required to obtain or retain a benefit. The frequency of responses submitted varies depending upon the requirement; but are usually on occasion, annually, and as a result of situations encountered. The ICR does not include questions of a sensitive nature. BSEE will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and DOI's implementing regulations (43 CFR part 2), 30 CFR 250.197, *Data and information to be made available to the public or for limited inspection,* and 30 CFR part 252, *OCS Oil and Gas Information Program.*

As previously stated, BSEE received 57 sets of comments from individual entities (companies, industry organizations, or private citizens). BSEE's responses to comments pertaining to the PRA can be found in IV.C. (Response to Comments and Section-by-Section Summary) of this document.

Since the original publication of the proposed rule, the ICR for subpart H has been renewed and as a result some of the burden hours and non-hour cost burdens have increased/decreased based on outreach performed during the renewal process. We have accounted for the revised burdens in this final rule as follows:

§§ 250.814(a), 250.815(b), 250.828(a), and 250.829(b)—NEW: Alternate setting depth requests was identified as information collection (+1 hour);

§§ 250.827 and 250.869(a)(3)—NEW: Alternative Procedures is covered under subpart A (−3 hours);

§ 250.837(b)(2)—Submit plan to shut-in wells affected by a dropped object is covered under APD or APM (−2 hours);

§ 250.841(b)—NEW: Temporary repairs to facility piping requests was identified as information collection (+780 hour);

§ 250.852(c)(2)—NEW: Request a different sized PSV was listed as 1 hour, 1 response, 5 total burden hours, while it should have been 1 hour, 1 response, 1 total burden hour (−4 hours);

§ 250.855(a)—NEW: Uniquely identify all ESD stations (Note: while this is considered usual and customary business practice, not all companies have done this correctly. The burden listed is only for those who have new floating facilities) (+32 hours);

§ 250.876—NEW: Document and retain, for at least 5 years, all tube-type heater information/requirements; make available to BSEE upon request (+300 hours);

§ 250.880(a)(3)—NEW: Notify BSEE and receive approval before performing modifications to existing subsea infrastructure (+10 hours);

§ 250.802(c)(1)—NEW: Independent third-party for reviewing and certifying various statements (+$550,000);

§ 250.861(b)—NEW: Send foam concentrate sample(s) to authorized representative for quality condition testing (+$209,000); and

§ 250.876—NEW: Have qualified third party remove and inspect, and repair or replace as needed, fire tube (+$4,500,000).

Also, between the proposed and final rulemaking, the cost recovery fees under 30 CFR 250.125 increased based on a final rule published on October 1, 2013 (78 FR 60208), which affects several of the applications subject to this final rule. The most current approved fees and burden hours pertaining to subpart H are listed in the following burden table. While the fees for each affected application increased, the number of applications went down and the remainder of the regulatory requirement burdens in the ICR increased. These changes resulted in a net decrease for non-hour cost burdens (−$20,313) and a net increase for burden hours (+29,218).

As stated previously, this final rule also applies to one regulation under 30 CFR part 250, subpart A, General (§ 250.107(c)). Once this final rule becomes effective, the paperwork burden associated with subpart A will be removed from this collection of information and consolidated with the IC burdens under OMB Control Number 1014–0022.

BURDEN TABLE

Citation 30 CFR Part 250, Subpart A	Reporting and Recordkeeping Requirement*	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
107(c)(3)	**NEW:** Request waiver by demonstrating the use of BAST would not be practicable.	5	2 justifications	10
Subtotal			**2 responses**	**10 hours**

Citation 30 CFR Part 250 Subpart H and NTL(s)	Reporting and Recordkeeping Requirement*	Hour Burden	Average No. of Annual Responses	Annual Burden Hours (rounded)
		Non-Hour Cost Burdens		
804; 805; 826; 828(c); 834; 838; 839; 870; 873; 874; 875; 880	References to Deepwater Operations Plans (DWOPs).	Burdens are covered under 1014-0024.		
804; 837(b)(2)	Reference to Applications for Permit to Drill (APD).	Burdens are covered under 1014-0025.		
804; 813; 828(b); 837(b)(2)	Reference to Applications for Permit to Modify (APM).	Burdens are covered under 1014-0026.		
800 – 890	Request approval to use new or alternative procedures or equipment; or departures to the operating requirements along with supporting documentation if applicable.	Burdens are covered under 1014-0022.		
General Requirements				
800(a)	Requirements for your production safety system application.	Burden included with specific requirements below.		0
800(a); 880(a)(1), (2)	Prior to production, request approval and pre-production inspection; notify BSEE 72 hours before commencement; notify upon commencement of production.	1	41 requests	41
801(c)	Request evaluation and approval from OORP that includes all relevant information of other quality assurance programs by appropriate qualified entity; or third-party certification mark covering manufacture of SPPE.	34	1 request	34
852(e)(4);	**NEW:** Submit statement/certification for: alternate quality management system, exposure functionality; pipe is suitable and manufacturer has complied with IVA; suitable firefighting foam per original manufacturer specifications; make documentation accessible to BSEE.	Not considered IC under 5 CFR 1320.3(h)(1).		0
801(c);	**NEW:** Independent third-party for reviewing	$500 for 1,100 reviews = $550,000		

802(c)(1);	and certifying various statements throughout this subpart.**			
802(c)(5, (e)	**NEW:** Document all manufacturing, traceability, quality control, installation, testing, repair, redress, performance, and inspection requirements, *etc.* Retain all required documentation of SPEE equipment until 1 year after the date of decommissioning the equipment.	2	30 documents	60
803(a), (d)	**NEW:** Within 30 days of discovery and identification of SPPE failure, provide a written notice of equipment failure to manufacturer and Chief, OORP, or designee.	2	10 notices	20
803(b), (d)	**NEW:** Document and determine the results of the SPPE failure within 120 days and corrective action taken; if appropriate, per requirements, give copy of report to manufacturer and Chief, OORP, or designee.	5	10 documents	50
803(c), (d)	**NEW:** Submit to Chief of OORP or designee modified procedures you made if notified by manufacturer of design changes or you changed operating or repair procedures as result of a failure, within 30 days of changes.	2	1 submittal	2
804(a); 805(b)	Submit detailed info regarding installing SSSVs and related equipment in an HPHT environment with your APD, APM, DWOP, *etc.*			0
814(a); 815(b); 828(a); 829(b);	**NEW:** BSEE will approve on a case-by-case basis.	1	1 request	1
841(b)	**NEW**: Request District Manager approval of temporary repairs to facility piping not to exceed 30 days.	1	780 requests	780
		Subtotal	**1,974 responses**	**988 hours**
			$550,000 non-hour costs	
	Surface and Subsurface Safety Systems – Dry Trees			
810; 816; 830	Submit request for a determination that a well is incapable of natural flow.	14	11 wells	157
	Verify the no-flow condition of the well annually.	¼		
817(b); 869(a)	Identify well with sign on wellhead that sub-surface safety device is removed; flag safety devices that are out of service; a visual indicator must be used to identify the bypassed safety device.	Not considered IC under 5 CFR 1320.3(b)(2).		0
817(b)	Record removal of subsurface safety device.	Burden included in § 250.890 of this subpart.		0
		Subtotal	**11 responses**	**157 hours**
	Subsea and Subsurface Safety Systems – Subsea Trees			
831; 833(a), (b); 837(c)(5); 838(c); 874(g)(2),	**NEW:** Notify/contact BSEE: (1) if you cannot test all valves and sensors; (2) 48 hours in advance if monitoring ability affected; (3) primary USV designation changes; designating USV2 or another	Notifications (1) ½ (2) 2 (3) 1 (4) ½	 6 1 1 1	7

(h)(1)	qualified valve; (4) resuming production; (5) 12 hours of detecting loss of communication; immediately if you cannot meet value closure conditions.	(5) ½	1	
831	**NEW:** Submit a repair/replacement plan to monitor and test.	2	1 submittal	2
837(a)	**NEW:** Request approval to not shut-in a subsea well in an emergency.	½	10 requests	5
837(b)(2); (c)(2)	**NEW:** Obtain approval to resume production (1) after communication is restored; (2) P/L PSHL sensor.	½	2 approvals	1
838(a)(2); 839(a)(2)	**NEW:** Verify closure time of USV upon request of BSEE.	2	2 verifications	4
838(c)(3)	**NEW:** Request approval to produce after loss of communication - include alternate valve closure table or alternate hydraulic bleed schedule.	2	1 approval	2
		Subtotal	**26 responses**	**21 hours**
Production Safety Systems				
842;	Submit application, and all required/supporting information, for a production safety system with > 125 components.	26	1 application	26
		$5,426 per submission x 1 = $5,426 $14,280 per offshore visit x 1 = $14,280 $7,426 per shipyard visit x 1 = $7,426		
	25 – 125 components.	19	4 applications	76
		$1,314 per submission x 4 = $5,256 $8,967 per offshore visit x 1 = $8,967 $5,141 per shipyard visit x 1 = $5,141		
	< 25 components.	12	10 application	120
		$652 per submission x 10 = $6,520		
	Submit modification to application for production safety system with > 125 components.	13	174 modifications	2,262
		$605 per submission x 174 = $105,270		
	25 – 125 components.	10	615 modifications	6,150
		$217 per submission x 615 = $133,455		
	< 25 components.	7	345 modifications	2,415
		$92 per submission x 345 = $31,740		
842(b)	**NEW:** Your application must also include all required certification(s) [*i.e.,* hazards analysis, *etc.*,] that the designs for mechanical and electrical systems were reviewed, approved, and stamped by registered professional engineer. [NOTE: Upon promulgation, these certification production safety systems requirements will be consolidated into the application hour burden for the specific components]	6	32 certifications	192
842(c)	**NEW:** Submit a certification letter that the mechanical and electrical systems were installed in accordance with approved designs.	6	32 letters	192

842(d), (e);	**NEW:** Submit a certification letter within 60-days after production that the as-built diagrams, piping, and instrumentation diagrams are on file, certified correct, and stamped by a registered professional engineer; submit all the as-built diagrams.	6 ½	32 letters	208
842(f)	**NEW:** Maintain records pertaining to approved design and installation features and as-built pipe and instrumentation diagrams at either the onshore field office, readily available offshore, or location available to BSEE; make available to BSEE upon request and retain for the life of the facility.	½	32 records	16
		Subtotal	**1,277 responses**	**11,657 hours**
			$323,481 non-hour cost burdens	
Additional Production System Requirements				
851(a)(2)	**NEW:** Request approval to continue using uncoded pressure and fired vessels beyond 540 days after the effective date of the final rule.	2	1 request	2
851(b); 852(a)(2), (3); 858(b); 865(b)	Maintain most current pressure-recorder information at location available to BSEE for as long as information is valid.	35	658 records	23,030
851(c)(2)	**NEW:** Request approval for activation limits set less than 5 psi.	1	10 requests	10
852(c)(1)	**NEW:** Request approval to vent to some other location.	1	10 requests	10
852(c)(2)	**NEW:** Request a different sized and upstream location of the PSV.	1	6 request	6
852(e)(1)	**NEW**: Review manufacturer's Design Methodology Verification Report and IVA's certificate to ensure compliance.	1	10 reviews	10
852(e)(3)	Submit required manufacturer's design specifications for unbonded flexible pipe.	Burden is covered by the application requirement in § 250.842.		0
855(a)	**NEW:** Uniquely identify all EDS stations. [NOTE: while this is considered a usual and customary business practice, not all companies have done this correctly. The burden listed is only for those who have new floating facilities.]	8	4 floating facilities	32
855(b)	Maintain ESD schematic listing control function of all safety devices on the platform, field office closest to facility, or at location conveniently available to BSEE for the life of the facility.	18	650 listings	11,700
858(a)(3)	**NEW:** Request approval to use different procedure for gas-well gas affected.	1	1 request	1
859(a)(3), (4)	Post diagram of firefighting system; furnish evidence firefighting system suitable for operations in subfreezing climates.	8	18 postings	144
859(a)(5)	Obtain approval before installing any	Burden is covered by the		0

	firefighting equipment.	application requirement in § 250.842.		
859(c); 860(b), (c); related NTL(s)	Request approval to use a chemical-only fire system in lieu of a water system (including extensions up to 7 days of your approved request) by submitting, including but not limited to, submittal of justification and risk assessment (and all relevant information listed in the table of this section).	39	23 requests	897
860(d)	**NEW:** Change(s) made after approval rec'd re 860(b) - document change; maintain the revised version at facility or closest field office for BSEE review/inspection; submit new request w/updated risk assessment for approval; maintain for life of facility.	½	14 changes	7
861(b)	**NEW:** Annually conduct inspection of foam concentrates and tanks; make documentation of foam available to BSEE.	2	500 submittals	1,000
	NEW: Send foam concentrate sample(s) to authorized representative for quality condition testing.**	$418 per sample x 500 samples = $209,000.		
864	Maintain erosion control program records for 2 years; make available to BSEE upon request.	21	645 records	13,545
867(a)	**NEW:** Request approval to install temporary quarters.	6	1 request	6
867(b)	**NEW:** Submit supporting information/ documentation if required by BSEE to install a temporary firewater system.	1	1 request	1
867(c)	**NEW:** Request approval to use temporary equipment for well testing/clean-up.	1	300 requests	300
869(f)	Label all pneumatic control panels and computer-based control stations according to API RP 14C nomenclature.	Not considered IC under 5 CFR 1320.3(b)(2).		0
870(a)	**NEW:** Document PSL on your field test records w/delay greater than 45 seconds.	½	6 records	3
874(g)(3)	**NEW:** Submit request with alternative plan ensuring subsea shutdown capability.	2	5 requests	10
874(h)(2)	**NEW:** Request approval to continue to inject w/loss of communication.	1	5 requests	5
876	**NEW:** Document and retain, for at least 5 years, all tube-type heater information / requirements; make available to BSEE upon request. Have qualified 3rd party remove and inspect, repair or replace fire tube.**	1	300 documents	300
		$15,000 x 1,500 inspections / once every 5 years = 300 inspections = $4,500,000		
		Subtotal	**3,168 responses**	**51,019 hours**
			$4,709,000 non-hour cost burdens	
	Safety Device Testing			
880(a)(3)	**NEW:** Notify BSEE and receive approval before performing modifications to existing subsea infrastructure.	½	20 requests	10
880(d)(1)	**NEW:** Request approval for a well that is completed and disconnected from	1	1 request	1

	monitoring capability more than 24 months.			
		Subtotal	**21 response**	**11 hour**
Records and Training				
890(a), (b)	Maintain records for 2 years on subsurface and surface safety devices to include, but not limited to, status and history of each device; installation date and details, inspection, testing, repair, removal, adjustments, reinstallation, *etc.*; at field office nearest facility AND a secure onshore location; make records available to BSEE.	48	658 records	31,584
890(c)	**NEW:** Submit annually a contact list (w/all required information) for all OCS operated facilities or submit when revised.	½	1,000 annual lists	550
		½	100 revised lists	
		Subtotal	**1,758 responses**	**32,134 hours**
Total Burden Hours			**8,237 Responses**	**95,997 Hours**
			$5,582,481 Non-Hour Cost Burdens	

* In the future, BSEE may require electronic filing of certain submissions.

** In the proposed rule, this burden was overlooked.

An agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. The public may comment, at any time, on the accuracy of the IC burden in this rule and may submit any comments to DOI/BSEE; ATTN: Regulations and Standards Branch; VAE–ORP; 45600 Woodland Road, Sterling, VA 20166; email *kye.mason@bsee.gov*, or fax (703) 787–1093.

National Environmental Policy Act of 1969 (NEPA)

We prepared a final environmental assessment to determine whether this final rule will have a significant impact on the quality of the human environment under NEPA and have concluded that it will not have such an impact. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under NEPA is not required because we reached a Finding of No Significant Impact. A copy of the Environmental Assessment and Finding of No Significant Impact can be viewed at *www.regulations.gov* (use the keyword/ID BSEE–2012–0005).

Data Quality Act

In developing this rule we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554, app. C sec. 515, 114 Stat. 2763, 2763A–153–154).

Effects on the Nation's Energy Supply (E.O. 13211)

This rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and therefore it is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

List of Subjects in 30 CFR Part 250

Administrative practice and procedure, Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Oil and gas exploration, Penalties, Pipelines, Outer Continental Shelf—mineral resources, Outer Continental Shelf—rights-of-way, Reporting and recordkeeping requirements, Sulfur.

Dated: August 24, 2016.

Amanda Leiter,

Acting Assistant Secretary—Land and Minerals Management.

For the reasons stated in the preamble, the Bureau of Safety and Environmental Enforcement (BSEE) amends 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULFUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 1. The authority citation for part 250 continues to read as follows:

Authority: 30 U.S.C. 1751; 31 U.S.C. 9701; 33 U.S.C. 1321(j)(1)(C); 43 U.S.C. 1334.

■ 2. Amend § 250.107 by revising paragraph (c), removing paragraph (d), and redesignating paragraph (e) as paragraph (d) to read as follows:

§ 250.107 What must I do to protect health, safety, property, and the environment?

* * * * *

(c) *Best available and safest technology.* (1) On all new drilling and production operations and, except as provided in paragraph (c)(3) of this section, on existing operations, you must use the best available and safest technologies (BAST) which the Director determines to be economically feasible whenever the Director determines that failure of equipment would have a significant effect on safety, health, or the environment, except where the Director determines that the incremental benefits are clearly insufficient to justify the incremental costs of utilizing such technologies.

(2) Conformance with BSEE regulations will be presumed to constitute the use of BAST unless and until the Director determines that other technologies are required pursuant to paragraph (c)(1) of this section.

(3) The Director may waive the requirement to use BAST on a category of existing operations if the Director determines that use of BAST by that category of existing operations would not be practicable. The Director may waive the requirement to use BAST on an existing operation at a specific facility if you submit a waiver request demonstrating that the use of BAST would not be practicable.

* * * * *

■ 3. Revise the § 250.114 section heading to read as follows:

§ 250.114 How must I install, maintain, and operate electrical equipment?

* * * * *

■ 4. In § 250.125, revise the table in paragraph (a) to read as follows:

§ 250.125 Service fees.

(a) * * *

Service—processing of the following:	Fee amount	30 CFR citation
(1) Suspension of Operations/Suspension of Production (SOO/SOP) Request.	$2,123	§ 250.171(e).
(2) Deepwater Operations Plan (DWOP).	$3,599	§ 250.292(q).
(3) Application for Permit to Drill (APD); Form BSEE–0123.	$2,113 for initial applications only; no fee for revisions	§ 250.410(d); § 250.513(b); § 250.1617(a).
(4) Application for Permit to Modify (APM); Form BSEE–0124.	$125	§ 250.465(b); § 250.513(b); § 250.613(b); § 250.1618(a); § 250.1704(g).
(5) New Facility Production Safety System Application for facility with more than 125 components.	$5,426 $14,280 additional fee will be charged if BSEE conducts a pre-production inspection of a facility offshore, and $7,426 for an inspection of a facility while in a shipyard. A component is a piece of equipment or ancillary system that is protected by one or more of the safety devices required by API RP 14C (as incorporated by reference in § 250.198).	§ 250.842.
(6) New Facility Production Safety System Application for facility with 25–125 components.	$1,314 $8,967 additional fee will be charged if BSEE conducts a pre-production inspection of a facility offshore, and $5,141 for an inspection of a facility while in a shipyard.	§ 250.842.
(7) New Facility Production Safety System Application for facility with fewer than 25 components.	$652	§ 250.842.
(8) Production Safety System Application—Modification with more than 125 components reviewed.	$605	§ 250.842.
(9) Production Safety System Application—Modification with 25–125 components reviewed.	$217	§ 250.842.
(10) Production Safety System Application—Modification with fewer than 25 components reviewed.	$92	§ 250.842.
(11) Platform Application—Installation—Under the Platform Verification Program.	$22,734	§ 250.905(l).
(12) Platform Application—Installation—Fixed Structure Under the Platform Approval Program.	$3,256	§ 250.905(l).
(13) Platform Application—Installation—Caisson/Well Protector.	$1,657	§ 250.905(l)
(14) Platform Application—Modification/Repair.	$3,884	§ 250.905(l).
(15) New Pipeline Application (Lease Term).	$3,541	§ 250.1000(b).
(16) Pipeline Application—Modification (Lease Term).	$2,056	§ 250.1000(b).
(17) Pipeline Application—Modification (ROW).	$4,169	§ 250.1000(b).
(18) Pipeline Repair Notification	$388	§ 250.1008(e).
(19) Pipeline Right-of-Way (ROW) Grant Application.	$2,771	§ 250.1015(a).
(20) Pipeline Conversion of Lease Term to ROW.	$236	§ 250.1015(a).
(21) Pipeline ROW Assignment	$201	§ 250.1018(b).
(22) 500 Feet From Lease/Unit Line Production Request.	$3,892	§ 250.1156(a).
(23) Gas Cap Production Request	$4,953	§ 250.1157.
(24) Downhole Commingling Request.	$5,779	§ 250.1158(a).
(25) Complex Surface Commingling and Measurement Application.	$4,056	§ 250.1202(a); § 250.1203(b); § 250.1204(a).

Service—processing of the following:	Fee amount	30 CFR citation
(26) Simple Surface Commingling and Measurement Application.	$1,371	§ 250.1202(a); § 250.1203(b); § 250.1204(a).
(27) Voluntary Unitization Proposal or Unit Expansion.	$12,619	§ 250.1303(d).
(28) Unitization Revision	$896	§ 250.1303(d).
(29) Application to Remove a Platform or Other Facility.	$4,684	§ 250.1727.
(30) Application to Decommission a Pipeline (Lease Term).	$1,142	§ 250.1751(a) or § 250.1752(a).
(31) Application to Decommission a Pipeline (ROW).	$2,170	§ 250.1751(a) or § 250.1752(a).

* * * * *

■ 5. Amend § 250.198 as follows:
■ a. Revise paragraphs (g)(1) through (3);
■ b. Remove paragraphs (g)(6) and (7);
■ c. Redesignate paragraph (g)(8) as (g)(6);
■ d. Revise paragraphs, (h)(1), (51) through (53), (55) through (62), (65), (66), (68), (70), (71), (73), (74), and (93) through (95);
■ e. Add paragraph (h)(96).

The revisions and addition read as follows:

§ 250.198 Documents incorporated by reference.

* * * * *

(g) * * *

(1) ANSI/ASME Boiler and Pressure Vessel Code, Section I, Rules for Construction of Power Boilers; including Appendices, 2004 Edition; and July 1, 2005 Addenda, and all Section I Interpretations Volume 55, incorporated by reference at §§ 250.851(a) and 250.1629(b).

(2) ANSI/ASME Boiler and Pressure Vessel Code, Section IV, Rules for Construction of Heating Boilers; including Appendices 1, 2, 3, 5, 6, and Non-mandatory Appendices B, C, D, E, F, H, I, K, L, and M, and the Guide to Manufacturers Data Report Forms, 2004 Edition; July 1, 2005 Addenda, and all Section IV Interpretations Volume 55, incorporated by reference at §§ 250.851(a) and 250.1629(b).

(3) ANSI/ASME Boiler and Pressure Vessel Code, Section VIII, Rules for Construction of Pressure Vessels; Divisions 1 and 2, 2004 Edition; July 1, 2005 Addenda, Divisions 1, 2, and 3 and all Section VIII Interpretations Volumes 54 and 55, incorporated by reference at §§ 250.851(a) and 250.1629(b).

* * * * *

(h) * * *

(1) API 510, Pressure Vessel Inspection Code: In-Service Inspection, Rating, Repair, and Alteration, Downstream Segment, Ninth Edition, June 2006; incorporated by reference at §§ 250.851(a) and 250.1629(b);

* * * * *

(51) API RP 2RD, Recommended Practice for Design of Risers for Floating Production Systems (FPSs) and Tension-Leg Platforms (TLPs), First Edition, June 1998; reaffirmed, May 2006, Errata, June 2009; incorporated by reference at §§ 250.292, 250.733, 250.800(c), 250.901(a), (d), and 250.1002(b);

(52) API RP 2SK, Recommended Practice for Design and Analysis of Stationkeeping Systems for Floating Structures, Third Edition, October 2005, Addendum, May 2008; incorporated by reference at §§ 250.800(c) and 250.901(a), (d);

(53) API RP 2SM, Recommended Practice for Design, Manufacture, Installation, and Maintenance of Synthetic Fiber Ropes for Offshore Mooring, First Edition, March 2001, Addendum, May 2007; incorporated by reference at §§ 250.800(c) and 250.901;

* * * * *

(55) ANSI/API RP 14B, Recommended Practice for Design, Installation, Repair and Operation of Subsurface Safety Valve Systems, Fifth Edition, October 2005; incorporated by reference at §§ 250.802(b), 250.803(a), 250.814(d), 250.828(c), and 250.880(c);

(56) API RP 14C, Recommended Practice for Analysis, Design, Installation, and Testing of Basic Surface Safety Systems for Offshore Production Platforms, Seventh Edition, March 2001, Reaffirmed: March 2007; incorporated by reference at §§ 250.125(a), 250.292(j), 250.841(a), 250.842(a), 250.850, 250.852(a), 250.855, 250.856(a), 250.858(a), 250.862(e), 250.865(a), 250.867(a), 250.869(a) through (c), 250.872(a), 250.873(a), 250.874(a), 250.880(b) and (c), 250.1002(d), 250.1004(b), 250.1628(c) and (d), 250.1629(b), and 250.1630(a);

(57) API RP 14E, Recommended Practice for Design and Installation of Offshore Production Platform Piping Systems, Fifth Edition, October 1991; Reaffirmed, January 2013; incorporated by reference at §§ 250.841(b), 250.842(a), and 250.1628(b) and (d);

(58) API RP 14F, Recommended Practice for Design, Installation, and Maintenance of Electrical Systems for Fixed and Floating Offshore Petroleum Facilities for Unclassified and Class 1, Division 1 and Division 2 Locations, Upstream Segment, Fifth Edition, July 2008, Reaffirmed: April 2013; incorporated by reference at §§ 250.114(c), 250.842(b), 250.862(e), and 250.1629(b);

(59) API RP 14FZ, Recommended Practice for Design and Installation of Electrical Systems for Fixed and Floating Offshore Petroleum Facilities for Unclassified and Class I, Zone 0, Zone 1 and Zone 2 Locations, First Edition, September 2001, Reaffirmed: March 2007; incorporated by reference at §§ 250.114(c), 250.842(b), 250.862(e), and 250.1629(b);

(60) API RP 14G, Recommended Practice for Fire Prevention and Control on Fixed Open-type Offshore Production Platforms, Fourth Edition, April 2007; incorporated by reference at §§ 250.859(a), 250.862(e), 250.880(c), and 250.1629(b);

(61) API RP 14H, Recommended Practice for Installation, Maintenance and Repair of Surface Safety Valves and Underwater Safety Valves Offshore, Fifth Edition, August 2007; incorporated by reference at §§ 250.820, 250.834, 250.836, and 250.880(c);

(62) API RP 14J, Recommended Practice for Design and Hazards Analysis for Offshore Production Facilities, Second Edition, May 2001; Reaffirmed: January 2013; incorporated by reference at §§ 250.800(b) and (c), 250.842(b), and 250.901(a);

* * * * *

(65) API RP 500, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities Classified as Class I, Division 1 and Division 2, Second Edition, November 1997; Errata (August 17, 1998), Reaffirmed November 2002; incorporated by reference at

§§ 250.114(a), 250.459, 250.842(a), 250.862(a) and (e), 250.872(a), 250.1628(b) and (d), and 250.1629(b);

(66) API RP 505, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities Classified as Class I, Zone 0, Zone 1, and Zone 2, First Edition, November 1997; Reaffirmed, August 2013; incorporated by reference at §§ 250.114(a), 250.459, 250.842(a), 250.862(a) and (e), 250.872(a), 250.1628(b) and (d), and 250.1629(b);

* * * * *

(68) ANSI/API Specification Q1 (ANSI/API Spec. Q1), Specification for Quality Programs for the Petroleum, Petrochemical and Natural Gas Industry, Eighth Edition, December 2007, Addendum 1, June 2010; incorporated by reference at §§ 250.730, 250.801(b) and (c);

* * * * *

(70) ANSI/API Specification 6A (ANSI/API Spec. 6A), Specification for Wellhead and Christmas Tree Equipment, Nineteenth Edition, July 2004; Errata 1 (September 2004), Errata 2 (April 2005), Errata 3 (June 2006) Errata 4 (August 2007), Errata 5 (May 2009), Addendum 1 (February 2008), Addenda 2, 3, and 4 (December 2008); incorporated by reference at §§ 250.730, 250.802(a), 250.803(a), 250.833, 250.873(b), 250.874(g), and 250.1002(b);

(71) API Spec. 6AV1, Specification for Verification Test of Wellhead Surface Safety Valves and Underwater Safety Valves for Offshore Service, First Edition, February 1, 1996; reaffirmed April 2008; incorporated by reference at §§ 250.802(a), 250.833, 250.873(b), and 250.874(g);

* * * * *

(73) ANSI/API Spec. 14A, Specification for Subsurface Safety Valve Equipment, Eleventh Edition, October 2005, Reaffirmed, June 2012; incorporated by reference at §§ 250.802(b) and 250.803(a);

(74) ANSI/API Spec. 17J, Specification for Unbonded Flexible Pipe, Third Edition, July 2008, incorporated by reference at §§ 250.852(e), 250.1002(b), and 250.1007(a).

* * * * *

(93) ANSI/API Specification 17D, Design and Operation of Subsea Production Systems—Subsea Wellhead and Tree Equipment, Second Edition, May 2011, incorporated by reference at § 250.730;

(94) ANSI/API Recommended Practice 17H, Remotely Operated Vehicle Interfaces on Subsea Production Systems, First Edition, July 2004, Reaffirmed January 2009, incorporated by reference at § 250.734;

(95) ANSI/API RP 2N, Third Edition, "Recommended Practice for Planning, Designing, and Constructing Structures and Pipelines for Arctic Conditions", Third Edition, April 2015; incorporated by reference at § 250.470(g); and

(96) API 570 Piping Inspection Code: In-service Inspection, Rating, Repair, and Alteration of Piping Systems, Third Edition, November 2009; incorporated by reference at § 250.841(b).

* * * * *

■ 6. Revise § 250.518(d) to read as follows:

§ 250.518 Tubing and wellhead equipment.

* * * * *

(d) Subsurface safety equipment must be installed, maintained, and tested in compliance with the applicable sections in §§ 250.810 through 250.839.

* * * * *

■ 7. Revise § 250.619(d) to read as follows:

§ 250.619 Tubing and wellhead equipment.

* * * * *

(d) Subsurface safety equipment must be installed, maintained, and tested in compliance with the applicable sections in §§ 250.810 through 250.839.

* * * * *

■ 8. Revise subpart H to read as follows:

Subpart H—Oil and Gas Production Safety Systems

General Requirements

Sec.
250.800 General.
250.801 Safety and pollution prevention equipment (SPPE) certification.
250.802 Requirements for SPPE.
250.803 What SPPE failure reporting procedures must I follow?
250.804 Additional requirements for subsurface safety valves (SSSVs) and related equipment installed in high pressure high temperature (HPHT) environments.
250.805 Hydrogen sulfide.
250.806–250.809 [Reserved]

Surface and Subsurface Safety Systems—Dry Trees

250.810 Dry tree subsurface safety devices—general.
250.811 Specifications for SSSVs—dry trees.
250.812 Surface-controlled SSSVs—dry trees.
250.813 Subsurface-controlled SSSVs.
250.814 Design, installation, and operation of SSSVs—dry trees.
250.815 Subsurface safety devices in shut-in wells—dry trees.
250.816 Subsurface safety devices in injection wells—dry trees.
250.817 Temporary removal of subsurface safety devices for routine operations.
250.818 Additional safety equipment—dry trees.
250.819 Specification for surface safety valves (SSVs).
250.820 Use of SSVs.
250.821 Emergency action and safety system shutdown—dry trees.
250.822–250.824 [Reserved]

Subsea and Subsurface Safety Systems—Subsea Trees

250.825 Subsea tree subsurface safety devices—general.
250.826 Specifications for SSSVs—subsea trees.
250.827 Surface-controlled SSSVs—subsea trees.
250.828 Design, installation, and operation of SSSVs—subsea trees.
250.829 Subsurface safety devices in shut-in wells—subsea trees.
250.830 Subsurface safety devices in injection wells—subsea trees.
250.831 Alteration or disconnection of subsea pipeline or umbilical.
250.832 Additional safety equipment—subsea trees.
250.833 Specification for underwater safety valves (USVs).
250.834 Use of USVs.
250.835 Specification for all boarding shutdown valves (BSDVs) associated with subsea systems.
250.836 Use of BSDVs.
250.837 Emergency action and safety system shutdown—subsea trees.
250.838 What are the maximum allowable valve closure times and hydraulic bleeding requirements for an electro-hydraulic control system?
250.839 What are the maximum allowable valve closure times and hydraulic bleeding requirements for a direct-hydraulic control system?

Production Safety Systems

250.840 Design, installation, and maintenance—general.
250.841 Platforms.
250.842 Approval of safety systems design and installation features.
250.843–250.849 [Reserved]

Additional Production System Requirements

250.850 Production system requirements—general.
250.851 Pressure vessels (including heat-exchangers) and fired vessels.
250.852 Flowlines/Headers.
250.853 Safety sensors.
250.854 Floating production units equipped with turrets and turret-mounted systems.
250.855 Emergency shutdown (ESD) system.
250.856 Engines.
250.857 Glycol dehydration units.
250.858 Gas compressors.
250.859 Firefighting systems.
250.860 Chemical firefighting system.
250.861 Foam firefighting systems.
250.862 Fire and gas-detection systems.
250.863 Electrical equipment.
250.864 Erosion.
250.865 Surface pumps.
250.866 Personnel safety equipment.
250.867 Temporary quarters and temporary equipment.

250.868 Non-metallic piping.
250.869 General platform operations.
250.870 Time delays on pressure safety low (PSL) sensors.
250.871 Welding and burning practices and procedures.
250.872 Atmospheric vessels.
250.873 Subsea gas lift requirements.
250.874 Subsea water injection systems.
250.875 Subsea pump systems.
250.876 Fired and exhaust heated components.
250.877–250.879 [Reserved]

Safety Device Testing

250.880 Production safety system testing.
250.881–250.889 [Reserved]

Records and Training

250.890 Records.
250.891 Safety device training.
250.892–250.899 [Reserved]

Subpart H—Oil and Gas Production Safety Systems

General Requirements

§ 250.800 General.

(a) You must design, install, use, maintain, and test production safety equipment in a manner to ensure the safety and protection of the human, marine, and coastal environments. For production safety systems operated in subfreezing climates, you must use equipment and procedures that account for floating ice, icing, and other extreme environmental conditions that may occur in the area. You must not commence production until BSEE approves your production safety system application and you have requested a preproduction inspection.

(b) For all new production systems on fixed leg platforms, you must comply with API RP 14J (incorporated by reference as specified in § 250.198);

(c) For all new floating production systems (FPSs) (*e.g.,* column-stabilized-units (CSUs); floating production, storage and offloading facilities (FPSOs); tension-leg platforms (TLPs); and spars), you must:

(1) Comply with API RP 14J;

(2) Meet the production riser standards of API RP 2RD (incorporated by reference as specified in § 250.198), provided that you may not install single bore production risers from floating production facilities;

(3) Design all stationkeeping (*i.e.,* anchoring and mooring) systems for floating production facilities to meet the standards of API RP 2SK and API RP 2SM (both incorporated by reference as specified in § 250.198); and

(4) Design stationkeeping (*i.e.,* anchoring and mooring) systems for floating facilities to meet the structural requirements of §§ 250.900 through 250.921.

(d) If there are any conflicts between the documents incorporated by reference and the requirements of this subpart, you must follow the requirements of this subpart.

(e) You may use alternate procedures or equipment during operations after receiving approval from the District Manager. You must present your proposed alternate procedures or equipment as required by § 250.141.

(f) You may apply for a departure from the operating requirements of this subpart as provided by § 250.142. Your written request must include a justification showing why the departure is necessary and appropriate.

§ 250.801 Safety and pollution prevention equipment (SPPE) certification.

(a) *SPPE equipment.* In wells located on the OCS, you must install only safety and pollution prevention equipment (SPPE) considered certified under paragraph (b) of this section or accepted under paragraph (c) of this section. BSEE considers the following equipment to be types of SPPE:

(1) Surface safety valves (SSV) and actuators, including those installed on injection wells capable of natural flow;

(2) Boarding shutdown valves (BSDV) and their actuators, as of September 7, 2017. For subsea wells, the BSDV is the surface equivalent of an SSV on a surface well;

(3) Underwater safety valves (USV) and actuators; and

(4) Subsurface safety valves (SSSV) and associated safety valve locks and landing nipples.

(b) *Certification of SPPE.* SPPE that is manufactured and marked pursuant to ANSI/API Spec. Q1 (incorporated by reference as specified in § 250.198), is considered as certified SPPE under this part. All other SPPE is considered as not certified, unless approved in accordance with paragraph (c) of this section.

(c) *Accepting SPPE manufactured under other quality assurance programs.* BSEE may exercise its discretion to accept SPPE manufactured under a quality assurance program other than ANSI/API Spec. Q1, provided that the alternative quality assurance program is verified as equivalent to API Spec. Q1 by an appropriately qualified entity and that the operator submits a request to BSEE containing relevant information about the alternative program and receives BSEE approval. In addition, an operator may request that BSEE accept SPPE that is marked with a third-party certification mark other than the API monogram. All requests under this paragraph should be submitted to the Chief, Office of Offshore Regulatory Programs; Bureau of Safety and Environmental Enforcement; VAE–ORP; 45600 Woodland Road, Sterling, VA 20166.

§ 250.802 Requirements for SPPE.

(a) All SSVs, BSDVs, and USVs and their actuators must meet all of the specifications contained in ANSI/API Spec. 6A and API Spec. 6AV1 (both incorporated by reference as specified in § 250.198).

(b) All SSSVs and their actuators must meet all of the specifications and recommended practices of ANSI/API Spec. 14A and ANSI/API RP 14B, including all annexes (both incorporated by reference as specified in § 250.198). Subsurface-controlled SSSVs are not allowed on subsea wells.

(c) Requirements derived from the documents incorporated in this section for SSVs, BSDVs, USVs, and SSSVs and their actuators, include, but are not limited to, the following:

(1) Each device must be designed to function and to close in the most extreme conditions to which it may be exposed, including temperature, pressure, flow rates, and environmental conditions. You must have an independent third-party review and certify that each device will function as designed under the conditions to which it may be exposed. The independent third-party must have sufficient expertise and experience to perform the review and certification.

(2) All materials and parts must meet the original equipment manufacturer specifications and acceptance criteria.

(3) The device must pass applicable validation tests and functional tests performed by an API-licensed test agency.

(4) You must have requalification testing performed following manufacture design changes.

(5) You must comply with and document all manufacturing, traceability, quality control, and inspection requirements.

(6) You must follow specified installation, testing, and repair protocols.

(7) You must use only qualified parts, procedures, and personnel to repair or redress equipment.

(d) You must install and use SPPE according to the following table.

If . . .	Then . . .
(1) You need to install any SPPE . . .	You must install SPPE that conforms to § 250.801.
(2) A non-certified SPPE is already in service . . .	It may remain in service on that well.
(3) A non-certified SPPE requires offsite repair, re-manufacturing, or any hot work such as welding	You must replace it with SPPE that conforms to § 250.801.

(e) You must retain all documentation related to the manufacture, installation, testing, repair, redress, and performance of the SPPE until 1 year after the date of decommissioning of the equipment.

§ 250.803 What SPPE failure reporting procedures must I follow?

(a) You must follow the failure reporting requirements contained in section 10.20.7.4 of API Spec. 6A for SSVs, BSDVs, and USVs and section 7.10 of API Spec. 14A and Annex F of API RP 14B for SSSVs (all incorporated by reference in § 250.198). You must provide a written notice of equipment failure to the Chief, Office of Offshore Regulatory Programs or to the Chief's designee and to the manufacturer of such equipment within 30 days after the discovery and identification of the failure. A failure is any condition that prevents the equipment from meeting the functional specification or purpose.

(b) You must ensure that an investigation and a failure analysis are performed within 120 days of the failure to determine the cause of the failure. If the investigation and analyses are performed by an entity other than the manufacturer, you must ensure that manufacturer and the Chief, Office of Offshore Regulatory Programs or the Chief's designee receives a copy of the analysis report. You must also ensure that the results of the investigation and any corrective action are documented in the analysis report.

(c) If the equipment manufacturer notifies you that it has changed the design of the equipment that failed or if you have changed operating or repair procedures as a result of a failure, then you must, within 30 days of such changes, report the design change or modified procedures in writing to the Chief, Office of Offshore Regulatory Programs or the Chief's designee.

(d) Any notifications or reports submitted to the Chief, Office of Offshore Regulatory Programs under paragraphs (a), (b), and (c) of this section must be sent to: Bureau of Safety and Environmental Enforcement; VAE–ORP, 45600 Woodland Road, Sterling, VA 20166.

§ 250.804 Additional requirements for subsurface safety valves (SSSVs) and related equipment installed in high pressure high temperature (HPHT) environments.

(a) If you plan to install SSSVs and related equipment in an HPHT environment, you must submit detailed information with your Application for Permit to Drill (APD) or Application for Permit to Modify (APM), and Deepwater Operations Plan (DWOP) that demonstrates the SSSVs and related equipment are capable of performing in the applicable HPHT environment. Your detailed information must include the following:

(1) A discussion of the SSSVs' and related equipment's design verification analyses;

(2) A discussion of the SSSVs' and related equipment's design validation and functional testing processes and procedures used; and

(3) An explanation of why the analyses, processes, and procedures ensure that the SSSVs and related equipment are fit-for-service in the applicable HPHT environment.

(b) For this section, HPHT environment means when one or more of the following well conditions exist:

(1) The completion of the well requires completion equipment or well control equipment assigned a pressure rating greater than 15,000 psia or a temperature rating greater than 350 degrees Fahrenheit;

(2) The maximum anticipated surface pressure or shut-in tubing pressure is greater than 15,000 psia on the seafloor for a well with a subsea wellhead or at the surface for a well with a surface wellhead; or

(3) The flowing temperature is equal to or greater than 350 degrees Fahrenheit on the seafloor for a well with a subsea wellhead or at the surface for a well with a surface wellhead.

(c) For this section, related equipment includes wellheads, tubing heads, tubulars, packers, threaded connections, seals, seal assemblies, production trees, chokes, well control equipment, and any other equipment that will be exposed to the HPHT environment.

§ 250.805 Hydrogen sulfide.

(a) In zones known to contain hydrogen sulfide (H_2S) or in zones where the presence of H_2S is unknown, as defined in § 250.490, you must conduct production operations in accordance with that section and other relevant requirements of this subpart.

(b) You must receive approval through the DWOP process (§§ 250.286 through 250.295) for production operations in HPHT environments known to contain H_2S or in HPHT environments where the presence of H_2S is unknown.

§§ 250.806—250.809 [Reserved]

Surface and Subsurface Safety Systems—Dry Trees

§ 250.810 Dry tree subsurface safety devices—general.

For wells using dry trees or for which you intend to install dry trees, you must equip all tubing installations open to hydrocarbon-bearing zones with subsurface safety devices that will shut off the flow from the well in the event of an emergency unless, after you submit a request containing a justification, the District Manager determines the well to be incapable of natural flow. You must install flow couplings above and below the subsurface safety devices. These subsurface safety devices include the following devices and any associated safety valve lock and landing nipple:

(a) An SSSV, including either:

(1) A surface-controlled SSSV; or

(2) A subsurface-controlled SSSV.

(b) An injection valve.

(c) A tubing plug.

(d) A tubing/annular subsurface safety device.

§ 250.811 Specifications for SSSVs—dry trees.

All surface-controlled and subsurface-controlled SSSVs, safety valve locks, and landing nipples installed in the OCS must conform to the requirements specified in §§ 250.801 through 250.803.

§ 250.812 Surface-controlled SSSVs—dry trees.

You must equip all tubing installations open to a hydrocarbon-bearing zone that is capable of natural flow with a surface-controlled SSSV, except as specified in §§ 250.813, 250.815, and 250.816.

(a) The surface controls must be located on the site or at a BSEE-approved remote location. You may request District Manager approval to situate the surface controls at a remote location.

(b) You must equip dry tree wells not previously equipped with a surface-controlled SSSV, and dry tree wells in which a surface-controlled SSSV has been replaced with a subsurface-controlled SSSV, with a surface-controlled SSSV when the tubing is first removed and reinstalled.

§ 250.813 Subsurface-controlled SSSVs.

You may submit an APM or a request to the District Manager for approval to equip a dry tree well with a subsurface-controlled SSSV in lieu of a surface-controlled SSSV, if the subsurface-controlled SSSV is installed in a well equipped with a surface-controlled SSSV that has become inoperable and cannot be repaired without removal and reinstallation of the tubing. If you remove and reinstall the tubing, you must equip the well with a surface-controlled SSSV.

§ 250.814 Design, installation, and operation of SSSVs—dry trees.

You must design, install, and operate (including repair, maintain, and test) an SSSV to ensure its reliable operation.

(a) You must install the SSSV at a depth at least 100 feet below the mudline within 2 days after production is established. When warranted by conditions such as permafrost, unstable bottom conditions, hydrate formation, or paraffin problems, the District Manager may approve an alternate setting depth on a case-by-case basis.

(b) The well must not be open to flow while the SSSV is inoperable, except when flowing the well is necessary for a particular operation such as cutting paraffin or performing other routine operations as defined in § 250.601.

(c) Until the SSSV is installed, the well must be attended in the immediate vicinity so that any necessary emergency actions can be taken while the well is open to flow. During testing and inspection procedures, the well must not be left unattended while open to production unless you have installed a properly operating SSSV in the well.

(d) You must design, install, maintain, inspect, repair, and test all SSSVs in accordance with API RP 14B (incorporated by reference as specified in § 250.198). For additional SSSV testing requirements, refer to § 250.880.

§ 250.815 Subsurface safety devices in shut-in wells—dry trees.

(a) You must equip all new dry tree completions (perforated but not placed on production) and completions that are shut-in for a period of 6 months with one of the following:

(1) A pump-through-type tubing plug;

(2) A surface-controlled SSSV, provided the surface control has been rendered inoperative; or

(3) An injection valve capable of preventing backflow.

(b) When warranted by conditions such as permafrost, unstable bottom conditions, hydrate formation, and paraffin problems, the District Manager must approve the setting depth of the subsurface safety device for a shut-in well on a case-by-case basis.

§ 250.816 Subsurface safety devices in injection wells—dry trees.

You must install a surface-controlled SSSV or an injection valve capable of preventing backflow in all injection wells. This requirement is not applicable if the District Manager determines that the well is incapable of natural flow. You must verify the no-flow condition of the well annually.

§ 250.817 Temporary removal of subsurface safety devices for routine operations.

(a) You may remove a wireline- or pumpdown-retrievable subsurface safety device without further authorization or notice, for a routine operation that does not require BSEE approval of a Form BSEE–0124, Application for Permit to Modify (APM). For a list of these routine operations, see § 250.601. The removal period must not exceed 15 days.

(b) Prior to removal, you must identify the well by placing a sign on the wellhead stating that the subsurface safety device was removed. You must note the removal of the subsurface safety device in the records required by § 250.890. If the master valve is open, you must ensure that a trained person (see § 250.891) is in the immediate vicinity to attend the well and take any necessary emergency actions.

(c) You must monitor a platform well when a subsurface safety device has been removed, but a person does not need to remain in the well-bay area continuously if the master valve is closed. If the well is on a satellite structure, it must be attended by a support vessel, or a pump-through plug must be installed in the tubing at least 100 feet below the mudline and the master valve must be closed, unless otherwise approved by the appropriate District Manager.

(d) You must not allow the well to flow while the subsurface safety device is removed, except when it is necessary for the particular operation for which the SSSV is removed. The provisions of this paragraph are not applicable to the testing and inspection procedures specified in § 250.880.

§ 250.818 Additional safety equipment—dry trees.

(a) You must equip all tubing installations that have a wireline- or pumpdown-retrievable subsurface safety device with a landing nipple, with flow couplings or other protective equipment above and below it to provide for the setting of the device.

(b) The control system for all surface-controlled SSSVs must be an integral part of the platform emergency shutdown system (ESD).

(c) In addition to the activation of the ESD by manual action on the platform, the system may be activated by a signal from a remote location. Surface-controlled SSSVs must close in response to shut-in signals from the ESD and in response to the fire loop or other fire detection devices.

§ 250.819 Specification for surface safety valves (SSVs).

All wellhead SSVs and their actuators must conform to the requirements specified in §§ 250.801 through 250.803.

§ 250.820 Use of SSVs.

You must install, maintain, inspect, repair, and test all SSVs in accordance with API RP 14H (incorporated by reference as specified in § 250.198). If any SSV does not operate properly, or if any gas and/or liquid fluid flow is observed during the leakage test as described in § 250.880, then you must shut-in all sources to the SSV and repair or replace the valve before resuming production.

§ 250.821 Emergency action and safety system shutdown—dry trees.

(a) In the event of an emergency, such as an impending National Weather Service-named tropical storm or hurricane:

(1) Any well not yet equipped with a subsurface safety device and that is capable of natural flow must have the subsurface safety device properly installed as soon as possible, with due consideration being given to personnel safety.

(2) You must shut-in (by closing the SSV and the surface-controlled SSSV) the following types of wells:

(i) All oil wells, and

(ii) All gas wells requiring compression.

(b) Closure of the SSV must not exceed 45 seconds after automatic detection of an abnormal condition or actuation of an ESD. The surface-controlled SSSV must close within 2 minutes after the shut-in signal has closed the SSV. The District Manager must approve any alternative design-delayed closure time of greater than 2 minutes based on the mechanical/production characteristics of the individual well.

§§ 250.822—250.824 [Reserved]

Subsea and Subsurface Safety Systems—Subsea Trees

§ 250.825 Subsea tree subsurface safety devices—general.

(a) For wells using subsea (wet) trees or for which you intend to install subsea trees, you must equip all tubing installations open to hydrocarbon-bearing zones with subsurface safety devices that will shut off the flow from the well in the event of an emergency. You must also install flow couplings above and below the subsurface safety devices. For instances where the well at issue is incapable of natural flow, you may seek District Manager approval for using alternative procedures or equipment, if you propose to use a subsea safety system that is not capable of shutting off the flow from the well in the event of an emergency. Subsurface safety devices include the following and any associated safety valve lock and landing nipple:

(1) A surface-controlled SSSV;

(2) An injection valve;

(3) A tubing plug; and

(4) A tubing/annular subsurface safety device.

(b) After installing the subsea tree, but before the rig or installation vessel leaves the area, you must test all valves and sensors to ensure that they are operating as designed and meet all the conditions specified in this subpart.

§ 250.826 Specifications for SSSVs—subsea trees.

All SSSVs, safety valve locks, and landing nipples installed on the OCS must conform to the requirements specified in §§ 250.801 through 250.803 and any Deepwater Operations Plan (DWOP) required by §§ 250.286 through 250.295.

§ 250.827 Surface-controlled SSSVs—subsea trees.

You must equip all tubing installations open to a hydrocarbon-bearing zone that is capable of natural flow with a surface-controlled SSSV, except as specified in §§ 250.829 and 250.830. The surface controls must be located on the host facility.

§ 250.828 Design, installation, and operation of SSSVs—subsea trees.

You must design, install, and operate (including repair, maintain, and test) an SSSV to ensure its reliable operation.

(a) You must install the SSSV at a depth at least 100 feet below the mudline. When warranted by conditions, such as unstable bottom conditions, permafrost, hydrate formation, or paraffin problems, the District Manager may approve an alternate setting depth on a case-by-case basis.

(b) The well must not be open to flow while an SSSV is inoperable, unless specifically approved by the District Manager in an APM.

(c) You must design, install, maintain, inspect, repair, and test all SSSVs in accordance with your Deepwater Operations Plan (DWOP) and API RP 14B (incorporated by reference as specified in § 250.198). For additional SSSV testing requirements, refer to § 250.880.

§ 250.829 Subsurface safety devices in shut-in wells—subsea trees.

(a) You must equip all new subsea tree completions (perforated but not placed on production) and completions shut-in for a period of 6 months with one of the following:

(1) A pump-through-type tubing plug;

(2) An injection valve capable of preventing backflow; or

(3) A surface-controlled SSSV, provided the surface control has been rendered inoperative. For purposes of this section, a surface-controlled SSSV is considered inoperative if, for a direct hydraulic control system, you have bled the hydraulics from the control line and have isolated it from the hydraulic control pressure. If your controls employ an electro-hydraulic control umbilical and the hydraulic control pressure to the individual well cannot be isolated, a surface-controlled SSSV is considered inoperative if you perform the following:

(i) Disable the control function of the surface-controlled SSSV within the logic of the programmable logic controller which controls the subsea well;

(ii) Place a pressure alarm high on the control line to the surface-controlled SSSV of the subsea well; and

(iii) Close the USV and at least one other tree valve on the subsea well.

(b) When warranted by conditions, such as unstable bottom conditions, permafrost, hydrate formation, and paraffin problems, the District Manager must approve the setting depth of the subsurface safety device for a shut-in well on a case-by-case basis.

§ 250.830 Subsurface safety devices in injection wells—subsea trees.

You must install a surface-controlled SSSV or an injection valve capable of preventing backflow in all injection wells. This requirement is not applicable if the District Manager determines that the well is incapable of natural flow. You must verify the no-flow condition of the well annually.

§ 250.831 Alteration or disconnection of subsea pipeline or umbilical.

If a necessary alteration or disconnection of the pipeline or umbilical of any subsea well would affect your ability to monitor casing pressure or to test any subsea valves or equipment, you must contact the appropriate District Office at least 48 hours in advance and submit a repair or replacement plan to conduct the required monitoring and testing. You must not alter or disconnect until the repair or replacement plan is approved.

§ 250.832 Additional safety equipment—subsea trees.

(a) You must equip all tubing installations that have a wireline- or pump down-retrievable subsurface safety device installed after May 31, 1988, with a landing nipple, with flow couplings, or other protective equipment above and below it to provide for the setting of the device.

(b) The control system for all surface-controlled SSSVs must be an integral part of the platform ESD.

(c) In addition to the activation of the ESD by manual action on the platform, the system may be activated by a signal from a remote location.

§ 250.833 Specification for underwater safety valves (USVs).

All USVs, including those designated as primary or secondary, and any alternate isolation valve (AIV) that acts as a USV, if applicable, and their actuators, must conform to the requirements specified in §§ 250.801 through 250.803. A production master or wing valve may qualify as a USV under API Spec. 6A and API Spec. 6AV1 (both incorporated by reference as specified in § 250.198).

(a) Primary USV (USV1). You must install and designate one USV on a subsea tree as the USV1. The USV1 must be located upstream of the choke valve. As provided in paragraph (b) of this section, you must inform BSEE if the primary USV designation changes.

(b) Secondary USV (USV2). You may equip your tree with two or more valves qualified to be designated as a USV, one of which may be designated as the USV2. If the USV1 fails to operate properly or exhibits a leakage rate greater than allowed in § 250.880, you must notify the appropriate District Office and designate the USV2 or another qualified valve (*e.g.,* an AIV) that meets all the requirements of this subpart for USVs as the USV1. The

USV2 must be located upstream of the choke.

§ 250.834 Use of USVs.

You must install, maintain, inspect, repair, and test any valve designated as the primary USV in accordance with this subpart, your DWOP (as specified in §§ 250.286 through 250.295), and API RP 14H (incorporated by reference as specified in § 250.198). For additional USV testing requirements, refer to § 250.880.

§ 250.835 Specification for all boarding shutdown valves (BSDVs) associated with subsea systems.

You must install a BSDV on the pipeline boarding riser. All new BSDVs and any BSDVs removed from service for remanufacturing or repair and their actuators installed on the OCS must meet the requirements specified in §§ 250.801 through 250.803. In addition, you must:

(a) Ensure that the internal design pressure(s) of the pipeline(s), riser(s), and BSDV(s) is fully rated for the maximum pressure of any input source and complies with the design requirements set forth in subpart J, unless BSEE approves an alternate design.

(b) Use a BSDV that is fire rated for 30 minutes, and is pressure rated for the maximum allowable operating pressure (MAOP) approved in your pipeline application.

(c) Locate the BSDV within 10 feet of the first point of access to the boarding pipeline riser (*i.e.,* within 10 feet of the edge of platform if the BSDV is horizontal, or within 10 feet above the first accessible working deck, excluding the boat landing and above the splash zone, if the BSDV is vertical).

(d) Install a temperature safety element (TSE) and locate it within 5 feet of each BSDV.

§ 250.836 Use of BSDVs.

You must install, inspect, maintain, repair, and test all new BSDVs and BSDVs that you remove from service for remanufacturing or repair in accordance with API RP 14H (incorporated by reference as specified in § 250.198) for SSVs. If any BSDV does not operate properly or if any gas fluid and/or liquid fluid flow is observed during the leakage test, as described in § 250.880, you must shut-in all sources to the BSDV and immediately repair or replace the valve.

§ 250.837 Emergency action and safety system shutdown—subsea trees.

(a) In the event of an emergency, such as an impending named tropical storm or hurricane, you must shut-in all subsea wells unless otherwise approved by the District Manager. A shut-in is defined as a closed BSDV, USV, and surface-controlled SSSV.

(b) When operating a mobile offshore drilling unit (MODU) or other type of workover vessel in an area with producing subsea wells, you must:

(1) Suspend production from all such wells that could be affected by a dropped object, including upstream wells that flow through the same pipeline; or

(2) Establish direct, real-time communications between the MODU or other type of workover vessel and the production facility control room and prepare a plan to be submitted to the appropriate District Manager for approval, as part of an Application for Permit to Drill (BSEE–0123) or an Application for Permit to Modify (BSEE–0124), to shut-in any wells that could be affected by a dropped object. If an object is dropped, the driller (or other authorized rig floor personnel) must immediately secure the well directly under the MODU or other type of workover vessel using the ESD station near the driller's console while simultaneously communicating with the platform to shut-in all affected wells. You must also maintain without disruption, and continuously verify, communication between the platform and the MODU or other type of workover vessel. If communication is lost between the MODU or other type of workover vessel and the platform for 20 minutes or more, you must shut-in all wells that could be affected by a dropped object.

(c) In the event of an emergency, you must operate your production system according to the valve closure times in the applicable tables in §§ 250.838 and 250.839 for the following conditions:

(1) *Process upset.* In the event an upset in the production process train occurs downstream of the BSDV, you must close the BSDV in accordance with the applicable tables in §§ 250.838 and 250.839. You may reopen the BSDV to blow down the pipeline to prevent hydrates, provided you have secured the well(s) and ensured adequate protection.

(2) *Pipeline pressure safety high and low (PSHL) sensor.* In the event that either a high or a low pressure condition is detected by a PSHL sensor located upstream of the BSDV, you must secure the affected well and pipeline, and all wells and pipelines associated with a dual or multi pipeline system, by closing the BSDVs, USVs, and surface-controlled SSSVs in accordance with the applicable tables in §§ 250.838 and 250.839. You must obtain approval from the appropriate District Manager to resume production in the unaffected pipeline(s) of a dual or multi pipeline system. If the PSHL sensor activation was a false alarm, you may return the wells to production without contacting the appropriate District Manager.

(3) *ESD/TSE (platform).* In the event of an ESD activation that is initiated because of a platform ESD or platform TSE not associated with the BSDV, you must close the BSDV, USV, and surface-controlled SSSV in accordance with the applicable tables in §§ 250.838 and 250.839.

(4) *Subsea ESD (platform) or BSDV TSE.* In the event of an emergency shutdown activation that is initiated by the host platform due to an abnormal condition subsea, or a TSE associated with the BSDV, you must close the BSDV, USV, and surface-controlled SSSV in accordance with the applicable tables in §§ 250.838 and 250.839.

(5) *Subsea ESD (MODU).* In the event of an ESD activation that is initiated by a dropped object from a MODU or other type of workover vessel, you must secure all wells in the proximity of the MODU or other type of workover vessel by closing the USVs and surface-controlled SSSVs in accordance with the applicable tables in §§ 250.838 and 250.839. You must notify the appropriate District Manager before resuming production.

(d) Following an ESD or fire, you must bleed your low pressure (LP) and high pressure (HP) hydraulic systems in accordance with the applicable tables in §§ 250.838 and 250.839 to ensure that the valves are locked out of service and cannot be reopened inadvertently.

§ 250.838 What are the maximum allowable valve closure times and hydraulic bleeding requirements for an electro-hydraulic control system?

(a) If you have an electro-hydraulic control system, you must:

(1) Design the subsea control system to meet the valve closure times listed in paragraphs (b) and (d) of this section or your approved DWOP; and

(2) Verify the valve closure times upon installation. The District Manager may require you to verify the closure time of the USV(s) through visual authentication by diver or ROV.

(b) You must comply with the maximum allowable valve closure times and hydraulic system bleeding requirements listed in the following table or your approved DWOP as long as communication is maintained with the platform or with the MODU or other type of workover vessel:

VALVE CLOSURE TIMING, ELECTRO-HYDRAULIC CONTROL SYSTEM

If you have the following. . .	Your pipeline BSDV must. . .	Your USV1 must. . .	Your USV2 must. . .	Your alternate isolation valve must. . .	Your surface-controlled SSSV must. . .	Your LP hydraulic system must. . .	Your HP hydraulic system must. . .
(1) Process upset.	Close within 45 seconds after sensor activation.	[no requirements]			[no requirements].	[no requirements].	[no requirements].
(2) Pipeline PSHL.	Close within 45 seconds after sensor activation.	Close one or more valves within 2 minutes and 45 seconds after sensor activation. Close the designated USV1 within 20 minutes after sensor activation.			Close within 60 minutes after sensor activation. If you use a 60-minute manual resettable timer, you may continue to reset the time for closure up to a maximum of 24 hours total.	[no requirements].	Initiate unrestricted bleed within 24 hours after sensor activation.
(3) ESD/TSE (Platform).	Close within 45 seconds after ESD or sensor activation.	Close within 5 minutes after ESD or sensor activation. If you use a 5-minute resettable timer, you may continue to reset the time for closure up to a maximum of 20 minutes total.	Close within 20 minutes after ESD or sensor activation.		Close within 20 minutes after ESD or sensor activation. If you use a 20-minute manual resettable timer, you may continue to reset the time for closure up to a maximum of 60 minutes total.	Initiate unrestricted bleed within 60 minutes after ESD or sensor activation. If you use a 60-minute manual resettable timer you must initiate unrestricted bleed within 24 hours.	Initiate unrestricted bleed within 60 minutes after ESD or sensor activation. If you use a 60-minute manual resettable timer you must initiate unrestricted bleed within 24 hours.
(4) Subsea ESD (Platform) or BSDV TSE.	Close within 45 seconds after ESD or sensor activation.	Close one or more valves within 2 minutes and 45 seconds after ESD or sensor activation. Close all tree valves within 10 minutes after ESD or sensor activation			Close within 10 minutes after ESD or sensor activation.	Initiate unrestricted bleed within 60 minutes after ESD or sensor activation.	Initiate unrestricted bleed within 60 minutes after ESD or sensor activation.
(5) Subsea ESD (MODU or other type of workover vessel, Dropped object).	[no requirements].	Initiate valve closure immediately. You may allow for closure of the tree valves immediately prior to closure of the surface-controlled SSSV if desired.				Initiate unrestricted bleed immediately.	Initiate unrestricted bleed within 10 minutes after ESD activation.

(c) If you have an electro-hydraulic control system and experience a loss of communications (EH Loss of Comms), you must comply with the following:

(1) If you can meet the EH Loss of Comms valve closure timing conditions specified in the table in paragraph (d) of this section, you must notify the appropriate District Office within 12 hours of detecting the loss of communication.

(2) If you cannot meet the EH Loss of Comms valve closure timing conditions specified in the table in paragraph (d) of this section, you must notify the appropriate District Office immediately after detecting the loss of communication. You must shut-in production by initiating a bleed of the low pressure (LP) hydraulic system or the high pressure (HP) hydraulic system within 120 minutes after loss of communication. You must bleed the other hydraulic system within 180 minutes after loss of communication.

(3) You must obtain approval from the appropriate District Manager before continuing to produce after loss of communication when you cannot meet the EH Loss of Comms valve closure times specified in the table in paragraph (d) of this section. In your request, include an alternate valve closure timing table that your system is able to achieve. The appropriate District Manager may also approve an alternate hydraulic bleed schedule to allow for hydrate mitigation and orderly shut-in.

(d) If you experience a loss of communications, you must comply with the maximum allowable valve closure times and hydraulic system bleeding requirements listed in the following table or your approved DWOP:

VALVE CLOSURE TIMING, ELECTRO-HYDRAULIC CONTROL SYSTEM WITH LOSS OF COMMUNICATION

If you have the following. . .	Your pipeline BSDV must. . .	Your USV1 must. . .	Your USV2 must. . .	Your alternate isolation valve must. . .	Your surface-controlled SSSV must. . .	Your LP hydraulic system must. . .	Your HP hydraulic system must. . .
(1) Process upset.	Close within 45 seconds after sensor activation.	[no requirements]			[no requirements].	[no requirements].	[no requirements].
(2) Pipeline PSHL.	Close within 45 seconds after sensor activation.	Initiate closure when LP hydraulic system is bled (close valves within 5 minutes after sensor activation).			Initiate closure when HP hydraulic system is bled (close within 24 hours after sensor activation).	Initiate unrestricted bleed immediately, concurrent with sensor activation.	Initiate unrestricted bleed within 24 hours after sensor activation.
(3) ESD/TSE (Platform).	Close within 45 seconds after ESD or sensor activation.	Initiate closure when LP hydraulic system is bled (close valves within 20 minutes after ESD or sensor activation).			Initiate closure when HP hydraulic system is bled (close within 60 minutes after ESD or sensor activation).	Initiate unrestricted bleed concurrent with BSDV closure (bleed within 20 minutes after ESD or sensor activation).	Initiate unrestricted bleed within 60 minutes after ESD or sensor activation.
(4) Subsea ESD (Platform) or BSDV TSE.	Close within 45 seconds after ESD or sensor activation.	Initiate closure when LP hydraulic system is bled (close valves within 5 minutes after ESD or sensor activation).			Initiate closure when HP hydraulic system is bled (close within 20 minutes after ESD or sensor activation).	Initiate unrestricted bleed immediately.	Initiate unrestricted bleed immediately, allowing for surface-controlled SSSV closure.
(5) Subsea ESD (MODU or other type of workover vessel), Dropped object.	[no requirements].	Initiate closure immediately. You may allow for closure of the tree valves immediately prior to closure of the surface-controlled SSSV if desired.				Initiate unrestricted bleed immediately.	Initiate unrestricted bleed immediately.

§ 250.839 What are the maximum allowable valve closure times and hydraulic bleeding requirements for a direct-hydraulic control system?

(a) If you have a direct-hydraulic control system, you must:

(1) Design the subsea control system to meet the valve closure times listed in this section or your approved DWOP; and

(2) Verify the valve closure times upon installation. The District Manager may require you to verify the closure time of the USV(s) through visual authentication by diver or ROV.

(b) You must comply with the maximum allowable valve closure times and hydraulic system bleeding requirements listed in the following table or your approved DWOP:

VALVE CLOSURE TIMING, DIRECT-HYDRAULIC CONTROL SYSTEM

If you have the following. . .	Your pipeline BSDV must. . .	Your USV1 must. . .	Your USV2 must. . .	Your alternate isolation valve must. . .	Your surface-controlled SSSV must. . .	Your LP hydraulic system must. . .	Your HP hydraulic system must. . .
(1) Process upset.	Close within 45 seconds after sensor activation.	[no requirements]			[no requirements].	[no requirements].	[no requirements]
(2) Flowline PSHL.	Close within 45 seconds after sensor activation.	Close one or more valves within 2 minutes and 45 seconds after sensor activation. Close the designated USV1 within 20 minutes after sensor activation.			Close within 24 hours after sensor activation.	Complete bleed of USV1, USV2, and the AIV within 20 minutes after sensor activation.	Complete bleed within 24 hours after sensor activation.

VALVE CLOSURE TIMING, DIRECT-HYDRAULIC CONTROL SYSTEM—Continued

If you have the following. . .	Your pipeline BSDV must. . .	Your USV1 must. . .	Your USV2 must. . .	Your alternate isolation valve must. . .	Your surface-controlled SSSV must. . .	Your LP hydraulic system must. . .	Your HP hydraulic system must. . .
(3) ESD/TSE (Platform).	Close within 45 seconds after ESD or sensor activation.	Close all valves within 20 minutes after ESD or sensor activation.			Close within 60 minutes after ESD or sensor activation.	Complete bleed of USV1, USV2, and the AIV within 20 minutes after ESD or sensor activation.	Complete bleed within 60 minutes after ESD or sensor activation.
(4) Subsea ESD (Platform) or BSDV TSE.	Close within 45 seconds after ESD or sensor activation.	Close one or more valves within 2 minutes and 45 seconds after ESD or sensor activation. Close all tree valves within 10 minutes after ESD or sensor activation.			Close within 10 minutes after ESD or sensor activation.	Complete bleed of USV1, USV2, and the AIV within 10 minutes after ESD or sensor activation.	Complete bleed within 10 minutes after ESD or sensor activation.
(5) Subsea ESD (MODU or other type of workover vessel), Dropped object.	[no requirements].	Initiate closure immediately. If desired, you may allow for closure of the tree valves immediately prior to closure of the surface-controlled SSSV.				Initiate unrestricted bleed immediately.	Initiate unrestricted bleed immediately.

PRODUCTION SAFETY SYSTEMS

§ 250.840 Design, installation, and maintenance—general.

You must design, install, and maintain all production facilities and equipment including, but not limited to, separators, treaters, pumps, heat exchangers, fired components, wellhead injection lines, compressors, headers, and flowlines in a manner that is efficient, safe, and protects the environment.

§ 250.841 Platforms.

(a) You must protect all platform production facilities with a basic and ancillary surface safety system designed, analyzed, installed, tested, and maintained in operating condition in accordance with the provisions of API RP 14C (incorporated by reference as specified in § 250.198). If you use processing components other than those for which Safety Analysis Checklists are included in API RP 14C, you must utilize the analysis technique and documentation specified in API RP 14C to determine the effects and requirements of these components on the safety system. Safety device requirements for pipelines are contained in § 250.1004.

(b) You must design, install, inspect, repair, test, and maintain in operating condition all platform production process piping in accordance with API RP 14E and API 570 (both incorporated by reference as specified in § 250.198). The District Manager may approve temporary repairs to facility piping on a case-by-case basis for a period not to exceed 30 days.

§ 250.842 Approval of safety systems design and installation features.

(a) Before you install or modify a production safety system, you must submit a production safety system application to the District Manager for approval. The application must include the information prescribed in the following table:

You must submit:	Details and/or additional requirements:
(1) A schematic piping and instrumentation diagram	Showing the following: (i) Well shut-in tubing pressure; (ii) Piping specification breaks, piping sizes; (iii) Pressure relief valve set points; (iv) Size, capacity, and design working pressures of separators, flare scrubbers, heat exchangers, treaters, storage tanks, compressors and metering devices; (v) Size, capacity, design working pressures, and maximum discharge pressure of hydrocarbon-handling pumps; (vi) Size, capacity, and design working pressures of hydrocarbon-handling vessels, and chemical injection systems handling a material having a flash point below 100 degrees Fahrenheit for a Class I flammable liquid as described in API RP 500 and 505 (both incorporated by reference as specified in § 250.198); and (vii) Size and maximum allowable working pressures as determined in accordance with API RP 14E (incorporated by reference as specified in § 250.198).

You must submit:	Details and/or additional requirements:
(2) A safety analysis flow diagram (API RP 14C, Appendix E) and the related Safety Analysis Function Evaluation (SAFE) chart (API RP 14C, subsection 4.3.3) (incorporated by reference as specified in § 250.198).	If processing components are used, other than those for which Safety Analysis Checklists are included in API RP 14C, you must use the same analysis technique and documentation to determine the effects and requirements of these components upon the safety system.
(3) Electrical system information, including	(i) A plan for each platform deck and outlining all classified areas. You must classify areas according to API RP 500 or API RP 505 (both incorporated by reference as specified in § 250.198). (ii) Identification of all areas where potential ignition sources, including non-electrical ignition sources, are to be installed showing: (A) All major production equipment, wells, and other significant hydrocarbon sources, and a description of the type of decking, ceiling, walls (*e.g.,* grating or solid), and firewalls and; (B) The location of generators, control rooms, panel boards, major cabling/conduit routes, and identification of the primary wiring method (*e.g.,* type cable, conduit, wire) and; (iii) One-line electrical drawings of all electrical systems including the safety shutdown system. You must also include a functional legend.
(4) Schematics of the fire and gas-detection systems	Showing a functional block diagram of the detection system, including the electrical power supply and also including the type, location, and number of detection sensors; the type and kind of alarms, including emergency equipment to be activated; the method used for detection; and the method and frequency of calibration.
(5) The service fee listed in § 250.125	The fee you must pay will be determined by the number of components involved in the review and approval process.

(b) In the production safety system application, you must also certify the following:

(1) That all electrical installations were designed according to API RP 14F or API RP 14FZ, as applicable (incorporated by reference as specified in § 250.198);

(2) That the designs for the mechanical and electrical systems under paragraph (a) of this section were reviewed, approved, and stamped by an appropriate registered professional engineer(s). The registered professional engineer must be registered in a State or Territory of the United States and have sufficient expertise and experience to perform the duties; and

(3) That a hazards analysis was performed in accordance with § 250.1911 and API RP 14J (incorporated by reference as specified in § 250.198), and that you have a hazards analysis program in place to assess potential hazards during the operation of the facility.

(c) Before you begin production, you must certify, in a letter to the District Manager, that the mechanical and electrical systems were installed in accordance with the approved designs.

(d) Within 60 days after production commences, you must certify, in a letter to the District Manager, that the as-built diagrams for the new or modified production safety systems outlined in paragraphs (a)(1) and (2) of this section and the piping and instrumentation diagrams are on file and have been certified correct and stamped by an appropriate registered professional engineer(s). The registered professional engineer must be registered in a State or Territory in the United States and have sufficient expertise and experience to perform the duties.

(e) All as-built diagrams outlined in paragraphs (a)(1) and (2) of this section must be submitted to the District Manager within 60 days after production commences.

(f) You must maintain information concerning the approved designs and installation features of the production safety system at your offshore field office nearest the OCS facility or at other locations conveniently available to the District Manager. As-built piping and instrumentation diagrams must be maintained at a secure onshore location and readily available offshore. These documents must be made available to BSEE upon request and be retained for the life of the facility. All approvals are subject to field verifications.

§§ 250.843–250.849 [Reserved]

Additional Production System Requirements

§ 250.850 Production system requirements—general.

You must comply with the production safety system requirements in §§ 250.851 through 250.872, in addition to the practices contained in API RP 14C (incorporated by reference as specified in § 250.198).

§ 250.851 Pressure vessels (including heat exchangers) and fired vessels.

(a) Pressure vessels (including heat exchangers) and fired vessels supporting production operations must meet the requirements in the following table:

Item name	Applicable codes and requirements
(1) Pressure and fired vessels	(i) Must be designed, fabricated, and code stamped according to applicable provisions of sections I, IV, and VIII of the ANSI/ASME Boiler and Pressure Vessel Code (incorporated by reference as specified in § 250.198). (ii) Must be repaired, maintained, and inspected in accordance with API 510 (incorporated by reference as specified in § 250.198).
(2) Existing uncoded pressure and fired vessels (i) in use on November 7, 2016; (ii) with an operating pressure greater than 15 psig; and (iii) that are not code stamped in accordance with the ANSI/ASME Boiler and Pressure Vessel Code.	Must be justified and approval obtained from the District Manager for their continued use after March 1, 2018.

Item name	Applicable codes and requirements
(3) Pressure relief valves	(i) Must be designed and installed according to applicable provisions of sections I, IV, and VIII of the ASME Boiler and Pressure Vessel Code (incorporated by reference as specified in § 250.198). (ii) Must conform to the valve sizing and pressure-relieving requirements specified in these documents, but must be set no higher than the maximum-allowable working pressure of the vessel (except for cases where staggered set pressures are required for configurations using multiple relief valves or redundant valves installed and designated for operator use only). (iii) Vents must be positioned in such a way as to prevent fluid from striking personnel or ignition sources.
(4) Steam generators operating at less than 15 psig	Must be equipped with a level safety low (LSL) sensor which will shut off the fuel supply when the water level drops below the minimum safe level.
(5) Steam generators operating at 15 psig or greater	(i) Must be equipped with a level safety low (LSL) sensor which will shut off the fuel supply when the water level drops below the minimum safe level. (ii) Must be equipped with a water-feeding device that will automatically control the water level except when closed loop systems are used for steam generation.

(b) *Operating pressure ranges.* You must use pressure recording devices to establish the new operating pressure ranges of pressure vessels at any time that the normalized system pressure changes by 50 psig or 5 percent. Once system pressure has stabilized, pressure recording devices must be utilized to establish the new operating pressure ranges. The pressure recording devices must document the pressure range over time intervals that are no less than 4 hours and no more than 30 days long. You must maintain the pressure recording information you used to determine current operating pressure ranges at your field office nearest the OCS facility or at another location conveniently available to the District Manager for as long as the information is valid.

(c) Pressure shut-in sensors must be set according to the following table (initial set points for pressure sensors must be set utilizing gauge readings and engineering design):

Type of sensor	Settings	Additional requirements
(1) High pressure shut-in sensor, ...	Must be set no higher than 15 percent or 5 psi (whichever is greater) above the highest operating pressure of the vessel.	Must also be set sufficiently below (5 percent or 5 psi, whichever is greater) the relief valve's set pressure to assure that the pressure source is shut-in before the relief valve activates.
(2) Low pressure shut-in sensor, ...	Must be set no lower than 15 percent or 5 psi (whichever is greater) below the lowest pressure in the operating range.	You must receive specific approval from the District Manager for activation limits on pressure vessels that have a pressure safety low (PSL) sensor set less than 5 psi.

§ 250.852 Flowlines/Headers.

(a) You must:

(1) Equip flowlines from wells with both PSH and PSL sensors. You must locate these sensors in accordance with section A.1 of API RP 14C (incorporated by reference as specified in § 250.198).

(2) Use pressure recording devices to establish the new operating pressure ranges of flowlines at any time when the normalized system pressure changes by 50 psig or 5 percent, whichever is higher. The pressure recording devices must document the pressure range over time intervals that are no less than 4 hours and no more than 30 days long.

(3) Maintain the most recent pressure recording information you used to determine operating pressure ranges at your field office nearest the OCS facility or at another location conveniently available to the District Manager for as long as the information is valid.

(b) Flowline shut-in sensors must meet the requirements in the following table (initial set points for pressure sensors must be set using gauge readings and engineering design):

Type of flowline sensor	Settings
(1) PSH sensor,	Must be set no higher than 15 percent or 5 psi (whichever is greater) above the highest operating pressure of the flowline. In all cases, the PSH must be set sufficiently below the maximum shut-in wellhead pressure or the gas-lift supply pressure to ensure actuation of the SSV. Do not set the PSH sensor above the maximum allowable working pressure of the flowline.
(2) PSL sensor,	Must be set no lower than 15 percent or 5 psi (whichever is greater) below the lowest operating pressure of the flowline in which it is installed.

(c) If a well flows directly to a pipeline before separation, the flowline and valves from the well located upstream of and including the header inlet valve(s) must have a working pressure equal to or greater than the maximum shut-in pressure of the well unless the flowline is protected by one of the following:

(1) A relief valve which vents into the platform flare scrubber or some other location approved by the District Manager. You must design the platform flare scrubber to handle, without liquid-hydrocarbon carryover to the flare, the maximum-anticipated flow of hydrocarbons that may be relieved to the vessel; or

(2) Two SSVs with independent PSH sensors connected to separate relays and sensing points and installed with adequate volume upstream of any block valve to allow sufficient time for the SSVs to close before exceeding the maximum allowable working pressure. Each independent PSH sensor must close both SSVs along with any associated flowline PSL sensor. If the maximum shut-in pressure of a dry tree satellite well(s) is greater than 1½ times the maximum allowable pressure of the pipeline, a pressure safety valve (PSV) of sufficient size and relief capacity to protect against any SSV leakage or fluid hammer effect may be required by the District Manager. The PSV must be installed upstream of the host platform boarding valve and vent into the platform flare scrubber or some other location approved by the District Manager.

(d) If a well flows directly to the pipeline from a header without prior separation, the header, the header inlet valves, and pipeline isolation valve must have a working pressure equal to or greater than the maximum shut-in pressure of the well unless the header is protected by the safety devices as outlined in paragraph (c) of this section.

(e) If you are installing flowlines constructed of unbonded flexible pipe on a floating platform, you must:

(1) Review the manufacturer's Design Methodology Verification Report and the independent verification agent's (IVA's) certificate for the design methodology contained in that report to ensure that the manufacturer has complied with the requirements of API Spec. 17J (incorporated by reference as specified in § 250.198);

(2) Determine that the unbonded flexible pipe is suitable for its intended purpose;

(3) Submit to the District Manager the manufacturer's design specifications for the unbonded flexible pipe; and

(4) Submit to the District Manager a statement certifying that the pipe is suitable for its intended use and that the manufacturer has complied with the IVA requirements of API Spec. 17J (incorporated by reference as specified in § 250.198).

(f) Automatic pressure or flow regulating choking devices must not prevent the normal functionality of the process safety system that includes, but is not limited to, the flowline pressure safety devices and the SSV.

(g) You may install a single flow safety valve (FSV) on the platform to protect multiple subsea pipelines or wells that tie into a single pipeline riser provided that you install an FSV for each riser on the platform and test it in accordance with the criteria prescribed in § 250.880(c)(2)(v).

(h) You may install a single PSHL sensor on the platform to protect multiple subsea pipelines that tie into a single pipeline riser provided that you install a PSHL sensor for each riser on the platform and locate it upstream of the BSDV.

§ 250.853 Safety sensors.

You must ensure that:

(a) All shutdown devices, valves, and pressure sensors function in a manual reset mode;

(b) Sensors with integral automatic reset are equipped with an appropriate device to override the automatic reset mode; and

(c) All pressure sensors are equipped to permit testing with an external pressure source.

§ 250.854 Floating production units equipped with turrets and turret-mounted systems.

(a) For floating production units equipped with an auto slew system, you must integrate the auto slew control system with your process safety system allowing for automatic shut-in of the production process, including the sources (subsea wells, subsea pumps, *etc.*) and releasing of the buoy. Your safety system must immediately initiate a process system shut-in according to §§ 250.838 and 250.839 and release the buoy to prevent hydrocarbon discharge and damage to the subsea infrastructure when the following are encountered:

(1) Your buoy is clamped,

(2) Your auto slew mode is activated, and

(3) You encounter a ship heading/position failure or an exceedance of the rotational tolerances of the clamped buoy.

(b) For floating production units equipped with swivel stack arrangements, you must equip the portion of the swivel stack containing hydrocarbons with a leak detection system. Your leak detection system must be tied into your production process surface safety system allowing for automatic shut-in of the system. Upon seal system failure and detection of a hydrocarbon leak, your surface safety system must immediately initiate a process system shut-in according to §§ 250.838 and 250.839.

§ 250.855 Emergency shutdown (ESD) system.

The ESD system must conform to the requirements of Appendix C, section C1, of API RP 14C (incorporated by reference as specified in § 250.198), and the following:

(a) The manually operated ESD valve(s) must be quick-opening and non-restricted to enable the rapid actuation of the shutdown system. Electronic ESD stations must be wired as de-energize to trip circuits or as supervised circuits. Because of the key role of the ESD system in the platform safety system, all ESD components must be of high quality and corrosion resistant and stations must be uniquely identified. Only ESD stations at the boat landing may utilize a loop of breakable synthetic tubing in lieu of a valve or electric switch. This breakable loop is not required to be physically located on the boat landing, but must be accessible from a vessel adjacent to or attached to the facility.

(b) You must maintain a schematic of the ESD that indicates the control functions of all safety devices for the platforms on the platform, at your field office nearest the OCS facility, or at another location conveniently available to the District Manager, for the life of the facility.

§ 250.856 Engines.

(a) *Engine exhaust.* You must equip all engine exhausts to comply with the insulation and personnel protection requirements of API RP 14C, section 4.2 (incorporated by reference as specified in § 250.198). You must equip exhaust piping from diesel engines with spark arresters.

(b) *Diesel engine air intake.* You must equip diesel engine air intakes with a device to shut down the diesel engine in the event of runaway (*i.e.,* overspeed). You must equip diesel engines that are continuously attended with either remotely operated manual or automatic shutdown devices. You must equip diesel engines that are not continuously attended with automatic shutdown devices. The following diesel engines do not require a shutdown device: Engines for fire water pumps;

engines on emergency generators; engines that power BOP accumulator systems; engines that power air supply for confined entry personnel; temporary equipment on non-producing platforms; booster engines whose purpose is to start larger engines; and engines that power portable single cylinder rig washers.

§ 250.857 Glycol dehydration units.

(a) You must install a pressure relief system or an adequate vent on the glycol regenerator (reboiler) to prevent over pressurization. The discharge of the relief valve must be vented in a nonhazardous manner.

(b) You must install the FSV on the dry glycol inlet to the glycol contact tower as near as practical to the glycol contact tower.

(c) You must install the shutdown valve (SDV) on the wet glycol outlet from the glycol contact tower as near as practical to the glycol contact tower.

§ 250.858 Gas compressors.

(a) You must equip compressor installations with the following protective equipment as required in API RP 14C, sections A.4 and A.8 (incorporated by reference as specified in § 250.198).

(1) A pressure safety high (PSH) sensor, a pressure safety low (PSL) sensor, a pressure safety valve (PSV), a level safety high (LSH) sensor, and a level safety low (LSL) sensor to protect each interstage and suction scrubber.

(2) A temperature safety high (TSH) sensor in the discharge piping of each compressor cylinder or case discharge.

(3) You must design the PSH and PSL sensors and LSH controls protecting compressor suction and interstage scrubbers to actuate automatic SDVs located in each compressor suction and fuel gas line so that the compressor unit and the associated vessels can be isolated from all input sources. All automatic SDVs installed in compressor suction and fuel gas piping must also be actuated by the shutdown of the prime mover. Unless otherwise approved by the District Manager, gas-well gas affected by the closure of the automatic SDV on the suction side of a compressor must be diverted to the pipeline, diverted to a flare or vent in accordance with §§ 250.1160 or 250.1161, or shut-in at the wellhead.

(4) You must install a blowdown valve on the discharge line of all compressor installations that are 1,000 horsepower (746 kilowatts) or greater.

(b) Once system pressure has stabilized, you must use pressure recording devices to establish the new operating pressure ranges for compressor discharge sensors whenever the normalized system pressure changes by 50 psig or 5 percent, whichever is higher. The pressure recording devices must document the pressure range over time intervals that are no less than 4 hours and no more than 30 days long. You must maintain the most recent pressure recording information that you used to determine operating pressure ranges at your field office nearest the OCS facility or at another location conveniently available to the District Manager.

(c) Pressure shut-in sensors must be set according to the following table (initial set points for pressure sensors must be set utilizing gauge readings and engineering design):

Type of sensor	Settings	Additional requirements
(1) PSH sensor,	Must be set no higher than 15 percent or 5 psi (whichever is greater) above the highest operating pressure of the discharge line and sufficiently below the maximum discharge pressure to ensure actuation of the suction SDV.	Must also be set sufficiently below (5 percent or 5 psi, whichever is greater) the set pressure of the PSV to assure that the pressure source is shut-in before the PSV activates.
(2) PSL sensor,	Must be set no lower than 15 percent or 5 psi (whichever is greater) below the lowest operating pressure of the discharge line in which it is installed.	

§ 250.859 Firefighting systems.

(a) On fixed facilities, to protect all areas where production-handling equipment is located, you must install firefighting systems that meet the requirements of this paragraph. You must install a firewater system consisting of rigid pipe with fire hose stations and/or fixed firewater monitors to protect all areas where production-handling equipment is located. Your firewater system must include installation of a fixed water spray system in enclosed well-bay areas where hydrocarbon vapors may accumulate.

(1) Your firewater system must conform to API RP 14G (incorporated by reference as specified in § 250.198).

(2) Fuel or power for firewater pump drivers must be available for at least 30 minutes of run time during a platform shut-in. If necessary, you must install an alternate fuel or power supply to provide for this pump operating time unless the District Manager has approved an alternate firefighting system. In addition:

(i) As of September 7, 2017, you must have equipped all new firewater pump drivers with automatic starting capabilities upon activation of the ESD, fusible loop, or other fire detection system.

(ii) For electric-driven firewater pump drivers, to provide for a potential loss of primary power, you must install an automatic transfer switch to cross over to an emergency power source in order to maintain at least 30 minutes of run time. The emergency power source must be reliable and have adequate capacity to carry the locked-rotor currents of the fire pump motor and accessory equipment.

(iii) You must route power cables or conduits with wires installed between the fire water pump drivers and the automatic transfer switch away from hazardous-classified locations that can cause flame impingement. Power cables or conduits with wires that connect to the fire water pump drivers must be capable of maintaining circuit integrity for not less than 30 minutes of flame impingement.

(3) You must post, in a prominent place on the facility, a diagram of the firefighting system showing the location of all firefighting equipment.

(4) For operations in subfreezing climates, you must furnish evidence to the District Manager that the firefighting system is suitable for those conditions.

(5) You must obtain approval from the District Manager before installing any firefighting system.

(6) All firefighting equipment located on a facility must be in good working order whether approved as the primary, secondary, or ancillary firefighting system.

(b) On floating facilities, to protect all areas where production-handling equipment is located, you must install a firewater system consisting of rigid pipe with fire hose stations and/or fixed firewater monitors. You must install a fixed water spray system in enclosed well-bay areas where hydrocarbon vapors may accumulate. Your firewater system must conform to the USCG requirements for firefighting systems on floating facilities.

(c) Except as provided in paragraph (c)(1) and (2) of this section, on fixed and floating facilities, if you are required to maintain a firewater system and the system becomes inoperable, you must shut-in your production operations while making the necessary repairs. For fixed facilities only, you may continue your production operations on a temporary basis while you make the necessary repairs, provided that:

(1) You request that the appropriate District Manager approve the use of a chemical firefighting system on a temporary basis (for a period up to 7 days) while you make the necessary repairs;

(2) If you are unable to complete repairs during the approved time period because of circumstances beyond your control, the District Manager may grant multiple extensions to your previously approved request to use a chemical firefighting system for periods up to 7 days each.

§ 250.860 Chemical firefighting system.

For fixed platforms:

(a) On minor unmanned platforms, you may use a U.S. Coast Guard type and size rating "B–II" portable dry chemical unit (with a minimum UL Rating (US) of 60–B:C) or a 30-pound portable dry chemical unit, in lieu of a water system, as long as you ensure that the unit is available on the platform when personnel are on board.

(1) A minor platform is a structure with zero to five completions and no more than one item of production processing equipment.

(2) An unmanned platform is one that is not attended 24 hours a day or one on which personnel are not quartered overnight.

(b) On major platforms and minor manned platforms, you may use a firefighting system using chemicals-only in lieu of a water-based system if the District Manager determines that the use of a chemical system provides equivalent fire-protection control and would not increase the risk to human safety.

(1) A major platform is a structure with either six or more completions or zero to five completions with more than one item of production processing equipment.

(2) A minor platform is a structure with zero to five completions and no more than one item of production processing equipment.

(3) A manned platform is one that is attended 24 hours a day or one on which personnel are quartered overnight.

(c) On major platforms and minor manned platforms, to obtain approval to use a chemical-only fire prevention and control system in lieu of a water system under paragraph (b) of this section, you must submit to the District Manager:

(1) A justification for asserting that the use of a chemical system provides equivalent fire-protection control. The justification must address fire prevention, fire protection, fire control, and firefighting on the platform; and

(2) A risk assessment demonstrating that a chemical-only system would not increase the risk to human safety. You must provide the following and any other important information in your risk assessment:

For the use of a chemical fire-fighting system on major and minor manned platforms, you must provide the following in your risk assessment . . .	Including . . .
(i) Platform description	(A) The type and quantity of hydrocarbons (*i.e.*, natural gas, oil) that are produced, handled, stored, or processed at the facility.
	(B) The capacity of any tanks on the facility that you use to store either liquid hydrocarbons or other flammable liquids.
	(C) The total volume of flammable liquids (other than produced hydrocarbons) stored on the facility in containers other than bulk storage tanks. Include flammable liquids stored in paint lockers, storerooms, and drums.
	(D) If the facility is manned, provide the maximum number of personnel on board and the anticipated length of their stay.
	(E) If the facility is unmanned, provide the number of days per week the facility will be visited, the average length of time spent on the facility per visit, the mode of transportation, and whether or not transportation will be available at the facility while personnel are on board.
	(F) A diagram that depicts: quarters location, production equipment location, fire prevention and control equipment location, lifesaving appliances and equipment location, and evacuation plan escape routes from quarters and all manned working spaces to primary evacuation equipment.
(ii) Hazard assessment (facility specific).	(A) Identification of all likely fire initiation scenarios (including those resulting from maintenance and repair activities). For each scenario, discuss its potential severity and identify the ignition and fuel sources.
	(B) Estimates of the fire/radiant heat exposure that personnel could be subjected to. Show how you have considered designated muster areas and evacuation routes near fuel sources and have verified proper flare boom sizing for radiant heat exposure.
(iii) Human factors assessment (not facility specific).	(A) Descriptions of the fire-related training your employees and contractors have received. Include details on the length of training, whether the training was hands-on or classroom, the training frequency, and the topics covered during the training.
	(B) Descriptions of the training your employees and contractors have received in fire prevention, control of ignition sources, and control of fuel sources when the facility is occupied.
	(C) Descriptions of the instructions and procedures you have given to your employees and contractors on the actions they should take if a fire occurs. Include those instructions and procedures specific to evacuation. State how you convey this information to your employees and contractors on the platform.
(iv) Evacuation assessment (facility specific).	(A) A general discussion of your evacuation plan. Identify your muster areas (if applicable), both the primary and secondary evacuation routes, and the means of evacuation for both.
	(B) Description of the type, quantity, and location of lifesaving appliances available on the facility. Show how you have ensured that lifesaving appliances are located in the near vicinity of the escape routes.
	(C) Description of the types and availability of support vessels, whether the support vessels are equipped with a fire monitor, and the time needed for support vessels to arrive at the facility.
	(D) Estimates of the worst case time needed for personnel to evacuate the facility should a fire occur.
(v) Alternative protection assessment.	(A) Discussion of the reasons you are proposing to use an alternative fire prevention and control system.

For the use of a chemical fire-fighting system on major and minor manned platforms, you must provide the following in your risk assessment . . .	Including . . .
	(B) Lists of the specific standards used to design the system, locate the equipment, and operate the equipment/system. (C) Description of the proposed alternative fire prevention and control system/equipment. Provide details on the type, size, number, and location of the prevention and control equipment. (D) Description of the testing, inspection, and maintenance program you will use to maintain the fire prevention and control equipment in an operable condition. Provide specifics regarding the type of inspection, the personnel who conduct the inspections, the inspection procedures, and documentation and recordkeeping.
(vi) Conclusion	A summary of your technical evaluation showing that the alternative system provides an equivalent level of personnel protection for the specific hazards located on the facility.

(d) On major or minor platforms, if BSEE has approved your request to use a chemical-only fire suppressant system in lieu of a water system under paragraphs (b) and (c) of this section, and if you make an insignificant change to your platform subsequent to that approval, you must document the change and maintain the documentation for the life of the facility at either the facility or nearest field office for BSEE review and/or inspection. Do not submit this documentation to the District Manager. However, if you make a significant change to your platform (*e.g.,* placing a storage vessel with a capacity of 100 barrels or more on the facility, adding production equipment), or if you plan to man an unmanned platform temporarily, you must submit a new request for approval, including an updated risk assessment if previously required, to the appropriate District Manager. You must maintain, for the life of the facility, the most recent documentation that you submitted to BSEE at the facility or nearest field office.

§ 250.861 Foam firefighting systems.

When you install foam firefighting systems as part of a firefighting system that protects production handling areas, you must:

(a) Annually conduct an inspection of the foam concentrates and their tanks or storage containers for evidence of excessive sludging or deterioration;

(b) Annually send samples of the foam concentrate to the manufacturer or authorized representative for quality condition testing. You must have the sample tested to determine the specific gravity, pH, percentage of water dilution, and solid content. Based on these results, the foam must be certified by an authorized representative of the manufacturer as suitable firefighting foam consistent with the original manufacturer's specifications. The certification document must be readily accessible for field inspection. In lieu of sampling and certification, you may choose to replace the total inventory of foam with suitable new stock;

(c) Ensure that the quantity of concentrate meets design requirements, and that tanks or containers are kept full, with space allowed for expansion.

§ 250.862 Fire and gas-detection systems.

For production processing areas only:

(a) You must install fire (flame, heat, or smoke) sensors in all enclosed classified areas. You must install gas sensors in all inadequately ventilated, enclosed classified areas.

(1) Adequate ventilation is defined as ventilation that is sufficient to prevent accumulation of significant quantities of vapor-air mixture in concentrations over 25 percent of the lower explosive limit. An acceptable method of providing adequate ventilation is one that provides a change of air volume each 5 minutes or 1 cubic foot of air-volume flow per minute per square foot of solid floor area, whichever is greater.

(2) Enclosed areas (*e.g.,* buildings, living quarters, or doghouses) are defined as those areas confined on more than 4 of their 6 possible sides by walls, floors, or ceilings more restrictive to air flow than grating or fixed open louvers and of sufficient size to allow entry of personnel.

(3) A classified area is any area classified Class I, Group D, Division 1 or 2, following the guidelines of API RP 500 (incorporated by reference as specified in § 250.198), or any area classified Class I, Zone 0, Zone 1, or Zone 2, following the guidelines of API RP 505 (incorporated by reference as specified in § 250.198).

(b) All detection systems must be capable of continuous monitoring. Fire-detection systems and portions of combustible gas-detection systems related to the higher gas-concentration levels must be of the manual-reset type. Combustible gas-detection systems related to the lower gas-concentration level may be of the automatic-reset type.

(c) A fuel-gas odorant or an automatic gas-detection and alarm system is required in enclosed, continuously manned areas of the facility which are provided with fuel gas. A gas detection system is not required for living quarters and doghouses that do not contain a gas source and that are not located in a classified area.

(d) The District Manager may require the installation and maintenance of a gas detector or alarm in any potentially hazardous area.

(e) Fire- and gas-detection systems must be an approved type, and designed and installed in accordance with API RP 14C, API RP 14G, API RP 14F, API RP 14FZ, API RP 500, and API RP 505 (all incorporated by reference as specified in § 250.198), provided that, if compliance with any provision of those standards would be in conflict with applicable regulations of the U.S. Coast Guard, compliance with the U.S. Coast Guard regulations controls.

§ 250.863 Electrical equipment.

You must design, install, and maintain electrical equipment and systems in accordance with the requirements in § 250.114.

§ 250.864 Erosion.

You must have a program of erosion control in effect for wells or fields that have a history of sand production. The erosion-control program may include sand probes, X-ray, ultrasonic, or other satisfactory monitoring methods. You must maintain records for each lease that indicate the wells that have erosion-control programs in effect. You must also maintain the results of the programs for at least 2 years and make them available to BSEE upon request.

§ 250.865 Surface pumps.

(a) You must equip pump installations with the protective equipment required in API RP 14C, Appendix A—A.7, Pumps (incorporated by reference as specified in § 250.198).

(b) You must use pressure recording devices to establish the new operating pressure ranges for pump discharge sensors at any time when the normalized system pressure changes by 50 psig or 5 percent, whichever is higher. Once system pressure has stabilized, pressure recording devices must be utilized to establish the new operating pressure ranges. The pressure recording devices must document the pressure range over time intervals that are no less than 4 hours and no more than 30 days long. You must only maintain the most recent pressure recording information that you used to determine operating pressure ranges at your field office nearest the OCS facility or at another location conveniently available to the District Manager.

(c) Pressure shut-in sensors must be set according to the following table (initial set points for pressure sensors must be set utilizing gauge readings and engineering design):

Type of sensor	Settings	Additional requirements
(1) PSH sensor	Must be no higher than 15 percent or 5 psi (whichever is greater) above the highest operating pressure of the discharge line.	Must be set sufficiently below the maximum allowable working pressure of the discharge piping. The PSH must also be set at least 5 percent or 5 psi (whichever is greater) below the set pressure of the PSV to assure that the pressure source is shut-in before the PSV activates.
(2) PSL sensor	Must be set no lower than 15 percent or 5 psi (whichever is greater) below the lowest operating pressure of the discharge line in which it is installed.	

(d) The PSL must be placed into service when the pump discharge pressure has risen above the PSL sensing point, or within 45 seconds of the pump coming into service, whichever is sooner.

(e) You may exclude the PSH and PSL sensors on small, low-volume pumps such as chemical injection-type pumps. This is acceptable if such a pump is used as a sump pump or transfer pump, has a discharge rating of less than ½ gallon per minute (gpm), discharges into piping that is 1 inch or less in diameter, and terminates in piping that is 2 inches or larger in diameter.

(f) You must install a TSE in the immediate vicinity of all pumps in hydrocarbon service or those powered by platform fuel gas.

(g) The pump maximum discharge pressure must be determined using the maximum possible suction pressure and the maximum power output of the driver as appropriate for the pump type and service.

§ 250.866 Personnel safety equipment.

You must maintain all personnel safety equipment located on a facility, whether required or not, in good working condition.

§ 250.867 Temporary quarters and temporary equipment.

(a) The District Manager must approve all temporary quarters to be installed in production processing areas or other classified areas on OCS facilities. You must equip such temporary quarters with all safety devices required by API RP 14C, Appendix C (incorporated by reference as specified in § 250.198).

(b) The District Manager may require you to install a temporary firewater system for temporary quarters in production processing areas or other classified areas.

(c) Temporary equipment associated with the production process system, including equipment used for well testing and/or well clean-up, must be approved by the District Manager.

§ 250.868 Non-metallic piping.

On fixed OCS facilities, you may use non-metallic piping (such as that made from polyvinyl chloride, chlorinated polyvinyl chloride, and reinforced fiberglass) only in accordance with the requirements of § 250.841(b).

§ 250.869 General platform operations.

(a) Surface or subsurface safety devices must not be bypassed or blocked out of service unless they are temporarily out of service for startup, maintenance, or testing. You may take only the minimum number of safety devices out of service. Personnel must monitor the bypassed or blocked-out functions until the safety devices are placed back in service. Any surface or subsurface safety device which is temporarily out of service must be flagged. A designated visual indicator must be used to identify the bypassed safety device. You must follow the monitoring procedures as follows:

(1) If you are using a non-computer-based system, meaning your safety system operates primarily with pneumatic supply or non-programmable electrical systems, you must monitor bypassed safety devices by positioning monitoring personnel at either the control panel for the bypassed safety device, or at the bypassed safety device, or at the component that the bypassed safety device would be monitoring when in service. You must also ensure that monitoring personnel are able to view all relevant essential operating conditions until all bypassed safety devices are placed back in service and are able to initiate shut-in action in the event of an abnormal condition.

(2) If you are using a computer-based technology system, meaning a computer-controlled electronic safety system such as supervisory control and data acquisition and remote terminal units, you must monitor bypassed safety devices by maintaining instantaneous communications at all times among remote monitoring personnel and the personnel performing maintenance, testing, or startup. Until all bypassed safety devices are placed back in service, you must also position monitoring personnel at a designated control station that is capable of the following:

(i) Displaying all relevant essential operating conditions that affect the bypassed safety device, well, pipeline, and process component. If electronic display of all relevant essential conditions is not possible, you must have field personnel monitoring the level gauges (sight glass) and pressure gauges in order to know the current operating conditions. You must be in communication with all field personnel monitoring the gauges;

(ii) Controlling the production process equipment and the entire safety system;

(iii) Displaying a visual indicator when safety devices are placed in the bypassed mode; and

(iv) Upon command, overriding the bypassed safety device and initiating shut-in action in the event of an abnormal condition.

(3) You must not bypass for startup any element of the emergency support system or other support system required by API RP 14C, Appendix C (incorporated by reference as specified in § 250.198) without first receiving BSEE approval to depart from this

operating procedure. These systems include, but are not limited to:

(i) The ESD system to provide a method to manually initiate platform shutdown by personnel observing abnormal conditions or undesirable events. You do not have to receive approval from the District Manager for manual reset and/or initial charging of the system;

(ii) The fire loop system to sense the heat of a fire and initiate platform shutdown, and other fire detection devices (flame, thermal, and smoke) that are used to enhance fire detection capability. You do not have to receive approval from the District Manager for manual reset and/or initial charging of the system;

(iii) The combustible gas detection system to sense the presence of hydrocarbons and initiate alarms and platform shutdown before gas concentrations reach the lower explosive limit;

(iv) Adequate ventilation;

(v) The containment system to collect escaped liquid hydrocarbons and initiate platform shutdown;

(vi) Subsurface safety valves, including those that are self-actuated (subsurface-controlled SSSVs) or those that are activated by an ESD system and/or a fire loop (surface-controlled SSSV). You do not have to receive approval from the District Manager for routine operations in accordance with § 250.817;

(vii) The pneumatic supply system; and

(viii) The system for discharging gas to the atmosphere.

(4) In instances where components of the ESD, as listed in paragraph (a)(3) of this section, are bypassed for maintenance, precautions must be taken to provide the equivalent level of protection that existed prior to the bypass.

(b) When wells are disconnected from producing facilities and blind flanged, or equipped with a tubing plug, or the master valves have been locked closed, you are not required to comply with the provisions of API RP 14C (incorporated by reference as specified in § 250.198) or this regulation concerning the following:

(1) Automatic fail-close SSVs on wellhead assemblies, and

(2) The PSH and PSL sensors in flowlines from wells.

(c) When pressure or atmospheric vessels are isolated from production facilities (*e.g.,* inlet valve locked closed or inlet blind-flanged) and are to remain isolated for an extended period of time, safety device testing in accordance with API RP 14C (incorporated by reference as specified in § 250.198), or this subpart is not required, with the exception of the PSV, unless the vessel is open to the atmosphere.

(d) All open-ended lines connected to producing facilities and wells must be plugged or blind-flanged, except those lines designed to be open-ended such as flare or vent lines.

(e) On all new production safety system installations, component process control devices and component safety devices must not be installed utilizing the same sensing points.

(f) All pneumatic control panels and computer based control stations must be labeled according to API RP 14C nomenclature.

§ 250.870 Time delays on pressure safety low (PSL) sensors.

(a) You may apply any or all of the industry standard Class B, Class C, or Class B/C logic to all applicable PSL sensors installed on process equipment, as long as the time delay does not exceed 45 seconds. Use of a PSL sensor with a time delay greater than 45 seconds requires BSEE approval in accordance with § 250.141. You must document on your field test records any use of a PSL sensor with a time delay greater than 45 seconds. For purposes of this section, PSL sensors are categorized as follows:

(1) Class B safety devices have logic that allows for the PSL sensors to be bypassed for a fixed time period (typically less than 15 seconds, but not more than 45 seconds). Examples include sensors used in conjunction with the design of pump and compressor panels such as PSL sensors, lubricator no-flows, and high-water jacket temperature shutdowns.

(2) Class C safety devices have logic that allows for the PSL sensors to be bypassed until the component comes into full service (*i.e.,* the time at which the startup pressure equals or exceeds the set pressure of the PSL sensor, the system reaches a stabilized pressure, and the PSL sensor clears).

(3) Class B/C safety devices have logic that allows for the PSL sensors to incorporate a combination of Class B and Class C circuitry. These devices are used to ensure that the PSL sensors are not unnecessarily bypassed during startup and idle operations, (*e.g.,* Class B/C bypass circuitry activates when a pump is shut down during normal operations). The PSL sensor remains bypassed until the pump's start circuitry is activated and either:

(i) The Class B timer expires no later than 45 seconds from start activation, or

(ii) The Class C bypass is initiated until the pump builds up pressure above the PSL sensor set point and the PSL sensor comes into full service.

(b) If you do not install time delay circuitry that bypasses activation of PSL sensor shutdown logic for a specified time period on process and product transport equipment during startup and idle operations, you must manually bypass (pin out or disengage) the PSL sensor, with a time delay not to exceed 45 seconds.

§ 250.871 Welding and burning practices and procedures.

All welding, burning, and hot-tapping activities must be conducted according to the specific requirements in § 250.113.

§ 250.872 Atmospheric vessels.

(a) You must equip atmospheric vessels used to process and/or store liquid hydrocarbons or other Class I liquids as described in API RP 500 or 505 (both incorporated by reference as specified in § 250.198) with protective equipment identified in API RP 14C, section A.5 (incorporated by reference as specified in § 250.198). Transport tanks approved by the U.S. Department of Transportation, that are sealed and not connected via interconnected piping to the production process train and that are used only for storage of refined liquid hydrocarbons or Class I liquids, are not required to be equipped with the protective equipment identified in API RP 14C, section A.5.

(b) You must ensure that all atmospheric vessels are designed and maintained to ensure the proper working conditions for LSH sensors. The LSH sensor bridle must be designed to prevent different density fluids from impacting sensor functionality. For atmospheric vessels that have oil buckets, the LSH sensor must be installed to sense the level in the oil bucket.

(c) You must ensure that all flame arrestors are maintained to ensure proper design function (installation of a system to allow for ease of inspection should be considered).

§ 250.873 Subsea gas lift requirements.

If you choose to install a subsea gas lift system, you must design your system as approved in your DWOP or as follows:

(a) Design the gas lift supply pipeline in accordance with API RP 14C (incorporated by reference as specified in § 250.198) for the gas lift supply system located on the platform.

(b) Meet the applicable requirements in the following table:

If your subsea gas lift system introduces the lift gas to the . . .	Then you must install a				In addition, you must
	API Spec 6A and API Spec 6AV1 (both incorporated by reference as specified in § 250.198) gas-lift shutdown valve (GLSDV), and . . .	FSV on the gas-lift supply pipeline . . .	PSHL on the gas-lift supply . . .	API Spec 6A and API Spec 6AV1 manual isolation valve . . .	
(1) Subsea pipelines, pipeline risers, or manifolds via an external gas lift pipeline or umbilical.	Meet all of the requirements for the BSDV described in §§ 250.835 and 250.836 on the gas-lift supply pipeline. Locate the GLSDV within 10 feet of the first point of access to the gas-lift riser or topsides umbilical termination assembly (TUTA) (*i.e.,* within 10 feet of the edge of the platform if the GLSDV is horizontal, or within 10 feet above the first accessible working deck, excluding the boat landing and above the splash zone, if the GLSDV is in the vertical run of a riser, or within 10 feet of the TUTA if using an umbilical).	on the platform upstream (inboard) of the GLSDV.	pipeline on the platform downstream (out board) of the GLSDV.	downstream (out board) of the PSHL and above the waterline. This valve does not have to be actuated.	(i) Ensure that the MAOP of a subsea gas lift supply pipeline is equal to the MAOP of the production pipeline. (ii) Install an actuated fail-safe close gas-lift isolation valve (GLIV) located at the point of intersection between the gas lift supply pipeline and the production pipeline, pipeline riser, or manifold. (iii) Install the GLIV downstream of the underwater safety valve(s) (USV) and/or AIV(s).
(2) Subsea well(s) through the casing string via an external gas lift pipeline or umbilical.	Meet all of the requirements for the GLSDV described in §§ 250.835 and 250.836 on the gas-lift supply pipeline. Locate the GLSDV within 10 feet of the first point of access to the gas-lift riser or topsides umbilical termination assembly (TUTA) (*i.e.,* within 10 feet of the edge of the platform if the GLSDV is horizontal, or within 10 feet above the first accessible working deck, excluding the boat landing and above the splash zone, if the GLSDV is in the vertical run of a riser, or within 10 feet of the TUTA if using an umbilical).	on the platform upstream (inboard) of the GLSDV.	pipeline on the platform downstream (out board) of the GLSDV.	downstream (out board) of the PSHL and above the waterline. This valve does not have to be actuated..	(i) Install an actuated, fail-safe-closed GLIV on the gas lift supply pipeline near the wellhead to provide the dual function of containing annular pressure and shutting off the gas lift supply gas. (ii) If your subsea tree or tubing head is equipped with an annulus master valve (AMV) or an annulus wing valve (AWV), one of these may be designated as the GLIV. (iii) Consider installing the GLIV external to the subsea tree to facilitate repair and or replacement if necessary.
(3) Pipeline risers via a gas-lift line contained within the pipeline riser.	Meet all of the requirements for the GLSDV described in §§ 250.835(a), (b), and (d) and 250.836 on the gas-lift supply pipeline. Attach the GLSDV by flanged connection directly to the API Spec. 6A component used to suspend and seal the gas-lift line contained within the production riser. To facilitate the repair or replacement of the GLSDV or production riser BSDV, you may install a manual isolation valve between the GLSDV and the API Spec. 6A component used to suspend and seal the gas-lift line contained within the production riser, or outboard of the production riser BSDV and inboard of the API Spec. 6A component used to suspend and seal the gas-lift line contained within the production riser.	upstream (inboard) of the GLSDV.	flowline upstream (in-board) of the FSV.	downstream (out board) of the GLSDV.	(i) Ensure that the gas-lift supply flowline from the gas-lift compressor to the GLSDV is pressure-rated for the MAOP of the pipeline riser. (ii) Ensure that any surface equipment associated with the gas-lift system is rated for the MAOP of the pipeline riser. (iii) Ensure that the gas-lift compressor discharge pressure never exceeds the MAOP of the pipeline riser. (iv) Suspend and seal the gas-lift flowline contained within the production riser in a flanged API Spec. 6A component such as an API Spec. 6A tubing head and tubing hanger or a component designed, constructed, tested, and installed to the requirements of API Spec. 6A. (v) Ensure that all potential leak paths upstream or near the production riser BSDV on the platform provide the same level of safety and environmental protection as the production riser BSDV. (vi) Ensure that this complete assembly is fire-rated for 30 minutes.

(c) Follow the valve closure times and hydraulic bleed requirements according to your approved DWOP for the following:

(1) Electro-hydraulic control system with gas lift,

(2) Electro-hydraulic control system with gas lift with loss of communications,

(3) Direct-hydraulic control system with gas lift.

(d) Follow the gas lift system valve testing requirements according to the following table:

Type of gas lift system	Valve	Allowable leakage rate	Testing frequency
(1) Gas lifting a subsea pipeline, pipeline riser, or manifold via an external gas lift pipeline.	GLSDV	Zero leakage	Monthly, not to exceed 6 weeks.

Type of gas lift system	Valve	Allowable leakage rate	Testing frequency
	GLIV	N/A	Function tested quarterly, not to exceed 120 days.
(2) Gas lifting a subsea well through the casing string via an external gas lift pipeline.	GLSDV	Zero leakage	Monthly, not to exceed 6 weeks.
	GLIV	400 cc per minute of liquid or 15 scf per minute of gas..	Function tested quarterly, not to exceed 120 days
(3) Gas lifting the pipeline riser via a gas lift line contained within the pipeline riser.	GLSDV	Zero leakage	Monthly, not to exceed 6 weeks.

§ 250.874 Subsea water injection systems.

If you choose to install a subsea water injection system, your system must comply with your approved DWOP, which must meet the following minimum requirements:

(a) Adhere to the water injection requirements described in API RP 14C (incorporated by reference as specified in § 250.198) for the water injection equipment located on the platform. In accordance with § 250.830, either a surface-controlled SSSV or a water injection valve (WIV) that is self-activated and not controlled by emergency shut-down (ESD) or sensor activation must be installed in a subsea water injection well.

(b) Equip a water injection pipeline with a surface FSV and water injection shutdown valve (WISDV) on the surface facility.

(c) Install a PSHL sensor upstream (inboard) of the FSV and WISDV.

(d) Use subsea tree(s), wellhead(s), connector(s), and tree valves, and surface-controlled SSSV or WIV associated with a water injection system that are rated for the maximum anticipated injection pressure.

(e) Consider the effects of hydrogen sulfide (H2S) when designing your water flood system, as required by § 250.805.

(f) Follow the valve closure times and hydraulic bleed requirements according to your approved DWOP for the following:

(1) Electro-hydraulic control system with water injection,

(2) Electro-hydraulic control system with water injection with loss of communications, and

(3) Direct-hydraulic control system with water injection.

(g) Comply with the following injection valve testing requirements:

(1) You must test your injection valves as provided in the following table:

Valve	Allowable leakage rate	Testing frequency
(i) WISDV	Zero leakage	Monthly, not to exceed 6 weeks between tests.
(ii) Surface-controlled SSSV or WIV	400 cc per minute of liquid or 15 scf per minute of gas	Semiannually, not to exceed 6 calendar months between tests.

(2) If a designated USV on a water injection well fails the applicable test under § 250.880(c)(4)(ii), you must notify the appropriate District Manager and request approval to designate another API Spec 6A and API Spec. 6AV1 (both incorporated by reference as specified in § 250.198) certified subsea valve as your USV.

(3) If a USV on a water injection well fails the test and the surface-controlled SSSV or WIV cannot be tested as required under (g)(1)(ii) of this section because of low reservoir pressure, you must submit a request to the appropriate District Manager with an alternative plan that ensures subsea shutdown capabilities.

(h) If you experience a loss of communications during water injection operations, you must comply with the following:

(1) Notify the appropriate District Manager within 12 hours after detecting loss of communication; and

(2) Obtain approval from the appropriate District Manager to continue to inject during the loss of communication.

§ 250.875 Subsea pump systems.

If you choose to install a subsea pump system, your system must comply with your approved DWOP, which must meet the following minimum requirements:

(a) Include the installation of an isolation valve at the inlet of your subsea pump module.

(b) Include a PSHL sensor upstream of the BSDV, if the maximum possible discharge pressure of the subsea pump operating in a dead head condition (that is the maximum shut-in tubing pressure at the pump inlet and a closed BSDV) is less than the MAOP of the associated pipeline.

(c) If the maximum possible discharge pressure of the subsea pump operating in a dead head situation could be greater than the MAOP of the pipeline:

(1) Include, at minimum, 2 independent functioning PSHL sensors upstream of the subsea pump and 2 independent functioning PSHL sensors downstream of the pump, that:

(i) Are operational when the subsea pump is in service; and

(ii) Will, when activated, shut down the subsea pump, the subsea inlet isolation valve, and either the designated USV1, the USV2, or the alternate isolation valve.

(iii) If more than 2 PSHL sensors are installed both upstream and downstream of the subsea pump for operational flexibility, then 2 out of 3 voting logic may be implemented in which the subsea pump remains operational provided a minimum of 2 independent PSHL sensors are functional both upstream and downstream of the pump.

(2) Interlock the subsea pump motor with the BSDV to ensure that the pump cannot start or operate when the BSDV is closed, incorporate at a minimum the following permissive signals into the control system for your subsea pump, and ensure that the subsea pump is not able to be started or re-started unless:

(i) The BSDV is open;

(ii) All automated valves downstream of the subsea pump are open;

(iii) The upstream subsea pump isolation valve is open; and

(iv) All parameters associated with the subsea pump operation (*e.g.*, pump temperature high, pump vibration high, pump suction pressure high, pump discharge pressure high, pump suction flow low) must be cleared (*i.e.*, within operational limits) or continuously monitored by personnel who observe visual indicators displayed at a designated control station and have the capability to initiate shut-in action in the event of an abnormal condition.

(3) Monitor the separator for seawater.

(4) Ensure that the subsea pump systems are controlled by an electro-hydraulic control system.

(d) Follow the valve closure times and hydraulic bleed requirements according to your approved DWOP for the following:

(1) Electro-hydraulic control system with a subsea pump;

(2) A loss of communication with the subsea well(s) and not a loss of communication with the subsea pump control system without an ESD or sensor activation;

(3) A loss of communication with the subsea pump control system, and not a loss of communication with the subsea well(s);

(4) A loss of communication with the subsea well(s) and the subsea pump control system.

(e) For subsea pump testing:

(1) Perform a complete subsea pump function test, including full shutdown, after any intervention or changes to the software and equipment affecting the subsea pump; and

(2) Test the subsea pump shutdown, including PSHL sensors both upstream and downstream of the pump, each quarter (not to exceed 120 days between tests). This testing may be performed concurrently with the ESD function test required by § 250.880(c)(4)(v).

§ 250.876 Fired and exhaust heated components.

No later than September 7, 2018, and at least once every 5 years thereafter, you must have a qualified third-party remove and inspect, and then you must repair or replace, as needed, the fire tube for tube-type heaters that are equipped with either automatically controlled natural or forced draft burners installed in either atmospheric or pressure vessels that heat hydrocarbons and/or glycol. If removal and inspection indicates tube-type heater deficiencies, you must complete and document repairs or replacements. You must document the inspection results, retain such documentation for at least 5 years, and make the documentation available to BSEE upon request.

§§ 250.877—250.879 [Reserved]

Safety Device Testing

§ 250.880 Production safety system testing.

(a) *Notification.* You must:

(1) Notify the District Manager at least 72 hours before commencing production, so that BSEE may conduct a preproduction inspection of the integrated safety system.

(2) Notify the District Manager upon commencement of production so that BSEE may conduct a complete inspection.

(3) Notify the District Manager and receive BSEE approval before you perform any subsea intervention that modifies the existing subsea infrastructure in a way that may affect the casing monitoring capabilities and testing frequencies specified in the table set forth in paragraph (c)(4) of this section.

(b) *Testing methodologies.* You must:

(1) Test safety valves and other equipment at the intervals specified in the tables set forth in paragraph (c) of this section or more frequently if operating conditions warrant; and

(2) Perform testing and inspections in accordance with API RP 14C, Appendix D (incorporated by reference as specified in § 250.198), and the additional requirements specified in the tables of this section or as approved in the DWOP for your subsea system.

(c) *Testing frequencies.* You must:

(1) Comply with the following testing requirements for subsurface safety devices on dry tree wells:

Item name	Testing frequency, allowable leakage rates, and other requirements
(i) Surface-controlled SSSVs (including devices installed in shut-in and injection wells.	Semi-annually, not to exceed 6 calendar months between tests. Also test in place when first installed or reinstalled. If the device does not operate properly, or if a liquid leakage rate > 400 cubic centimeters per minute or a gas leakage rate > 15 standard cubic feet per minute is observed, the device must be removed, repaired, and reinstalled or replaced. Testing must be according to API RP 14B (incorporated by reference as specified in § 250.198) to ensure proper operation.
(ii) Subsurface-controlled SSSVs	Semi-annually, not to exceed 6 calendar months between tests for valves not installed in a landing nipple and 12 months for valves installed in a landing nipple. The valve must be removed, inspected, and repaired or adjusted, as necessary, and reinstalled or replaced.
(iii) Tubing plug	Semi-annually, not to exceed 6 calendar months between tests. Test by opening the well to possible flow. If a liquid leakage rate > 400 cubic centimeters per minute or a gas leakage rate > 15 standard cubic feet per minute is observed, the plug must be removed, repaired, and reinstalled or replaced. An additional tubing plug may be installed in lieu of removal.
(iv) Injection valves	Semi-annually, not to exceed 6 calendar months between tests. Test by opening the well to possible flow. If a liquid leakage rate > 400 cubic centimeters per minute or a gas leakage rate > 15 standard cubic feet per minute is observed, the valve must be removed, repaired and reinstalled or replaced.

(2) Comply with the following testing requirements for surface valves:

Item name	Testing frequency and requirements
(i) PSVs	Annually, not to exceed 12 calendar months between tests. Valve must either be bench-tested or equipped to permit testing with an external pressure source. Weighted disc vent valves used as PSVs on atmospheric tanks may be disassembled and inspected in lieu of function testing. The main valve piston must be lifted during this test.

Item name	Testing frequency and requirements
(ii) Automatic inlet SDVs that are actuated by a sensor on a vessel or compressor.	Once each calendar month, not to exceed 6 weeks between tests.
(iii) SDVs in liquid discharge lines and actuated by vessel low-level sensors.	Once each calendar month, not to exceed 6 weeks between tests.
(iv) SSVs	Once each calendar month, not to exceed 6 weeks between tests. Valves must be tested for both operation and leakage. You must test according to API RP 14H (incorporated by reference as specified in § 250.198). If an SSV does not operate properly or if any gas and/or liquid fluid flow is observed during the leakage test, the valve must be immediately repaired or replaced.
(v) Flowline FSVs	Once each calendar month, not to exceed 6 weeks between tests. All flowline FSVs must be tested, including those installed on a host facility in lieu of being installed at a satellite well. You must test flowline FSVs for leakage in accordance with the test procedure specified in API RP 14C (incorporated by reference as specified in § 250.198). If leakage measured exceeds a liquid flow of 400 cubic centimeters per minute or a gas flow of 15 standard cubic feet per minute, the FSV must be repaired or replaced.

(3) Comply with the following testing requirements for surface safety systems and devices:

Item name	Testing frequency and requirements
(i) Pumps for firewater systems	Must be inspected and operated according to API RP 14G, Section 7.2 (incorporated by reference as specified in § 250.198).
(ii) Fire- (flame, heat, or smoke) and gas detection systems.	Must be tested for operation and recalibrated every 3 months, not to exceed 120 days between tests, provided that testing can be performed in a non-destructive manner. Open flame or devices operating at temperatures that could ignite a methane-air mixture must not be used. All combustible gas-detection systems must be calibrated every 3 months.
(iii) ESD systems	(A) Pneumatic based ESD systems must be tested for operation at least once each calendar month, not to exceed 6 weeks between tests. You must conduct the test by alternating ESD stations monthly to close at least one wellhead SSV and verify a surface-controlled SSSV closure for that well as indicated by control circuitry actuation. All stations must be checked for functionality at least once each calendar month, not to exceed 6 weeks between tests. No station may be reused until all stations have been tested. (B) Electronic based ESD systems must be tested for operation at least once every 3 calendar months, not to exceed 120 days between tests. The test must be conducted by alternating ESD stations to close at least one wellhead SSV and verify a surface-controlled SSSV closure for that well as indicated by control circuitry actuation. All stations must be checked for functionality at least once every 3 calendar months, not to exceed 120 days between checks. No station may be reused until all stations have been tested. (C) Electronic/pneumatic based ESD systems must be tested for operation at least once every 3 calendar months, not to exceed 120 days between tests. The test must be conducted by alternating ESD stations to close at least one wellhead SSV and verify a surface-controlled SSSV closure for that well as indicated by control circuitry actuation. All stations must be checked for functionality at least once every 3 calendar months, not to exceed 120 days between checks. No station may be reused until all stations have been used.
(iv) TSH devices	Must be tested for operation annually, not to exceed 12 calendar months between tests, excluding those addressed in paragraph (c)(3)(v) of this section and those that would be destroyed by testing. Those that could be destroyed by testing must be visually inspected and the circuit tested for operations at least once every 12 months.
(v) TSH shutdown controls installed on compressor installations that can be nondestructively tested.	Must be tested every 6 months and repaired or replaced as necessary.
(vi) Burner safety low	Must be tested annually, not to exceed 12 calendar months between tests.
(vii) Flow safety low devices	Must be tested annually, not to exceed 12 calendar months between tests.
(viii) Flame, spark, and detonation arrestors	Must be visually inspected annually, not to exceed 12 calendar months between inspections.
(ix) Electronic pressure transmitters and level sensors: PSH and PSL; LSH and LSL.	Must be tested at least once every 3 months, not to exceed 120 days between tests.
(x) Pneumatic/electronic switch PSH and PSL; pneumatic/electronic switch/electric analog with mechanical linkage LSH and LSL controls.	Must be tested at least once each calendar month, not to exceed 6 weeks between tests.

(4) Comply with the following testing requirements for subsurface safety devices and associated systems on subsea tree wells:

Item name	Testing frequency, allowable leakage rates, and other requirements
(i) Surface-controlled SSSVs (including devices installed in shut-in and injection wells).	Tested semiannually, not to exceed 6 months between tests. If the device does not operate properly, or if a liquid leakage rate > 400 cubic centimeters per minute or a gas leakage rate > 15 standard cubic feet per minute is observed, the device must be removed, repaired, and reinstalled or replaced. Testing must be according to API RP 14B (incorporated by reference as specified in § 250.198) to ensure proper operation, or as approved in your DWOP.
(ii) USVs	Tested at least once every 3 calendar months, not to exceed 120 days between tests. If the device does not function properly, or if a liquid leakage rate > 400 cubic centimeters per minute or a gas leakage rate > 15 standard cubic feet per minute is observed, the valve must be removed, repaired, and reinstalled or replaced.
(iii) BSDVs	Tested at least once each calendar month, not to exceed 6 weeks between tests. Valves must be tested for both operation and leakage. You must test according to API RP 14H for SSVs (incorporated by reference as specified in § 250.198). If a BSDV does not operate properly or if any fluid flow is observed during the leakage test, the valve must be immediately repaired or replaced.
(iv) Electronic ESD logic	Tested at least once each calendar month, not to exceed 6 weeks between tests.
(v) Electronic ESD function	Tested at least once every 3 calendar months, not to exceed 120 days between tests. Shut-in at least one well during the ESD function test. If multiple wells are tied back to the same platform, a different well should be shut-in with each quarterly test.

(d) *Subsea wells.* (1) Any subsea well that is completed and disconnected from monitoring capability may not be disconnected for more than 24 months, unless authorized by BSEE.

(2) Any subsea well that is completed and disconnected from monitoring capability for more than 6 months must meet the following testing and other requirements:

(i) Each well must have 3 pressure barriers:

(A) A closed and tested surface-controlled SSSV,

(B) A closed and tested USV, and

(C) One additional closed and tested tree valve.

(ii) For new completed wells, prior to the rig leaving the well, the pressure barriers must be tested as follows:

(A) The surface-controlled SSSV must be tested for leakage in accordance with § 250.828(c);

(B) The USV and other pressure barrier must be tested to confirm zero leakage rate.

(iii) A sealing pressure cap must be installed on the flowline connection hub until the flowline is installed and connected. The pressure cap must be designed to accommodate monitoring for pressure between the production wing valve and cap. The pressure cap must also be designed so that a remotely operated vehicle can bleed pressure off, monitor for buildup, and confirm barrier integrity.

(iv) Pressure monitoring at the sealing pressure cap on the flowline connection hub must be performed in each well at intervals not to exceed 12 months from the time of initial testing of the pressure barrier (prior to demobilizing the rig from the field).

(v) You must have a drilling vessel capable of intervention into the disconnected well in the field or readily accessible for use until the wells are brought on line.

§§ 250.881—250.889 [Reserved]

Records and Training

§ 250.890 Records.

(a) You must maintain records that show the present status and history of each safety device. Your records must include dates and details of installation, removal, inspection, testing, repairing, adjustments, and reinstallation.

(b) You must maintain these records for at least 2 years. You must maintain the records at your field office nearest the OCS facility and a secure onshore location. These records must be available for review by a representative of BSEE.

(c) You must submit to the appropriate District Manager a contact list for all OCS facilities at least annually or when contact information is revised. The contact list must include:

(1) Designated operator name;

(2) Designated primary point of contact for the facility;

(3) Facility phone number(s), if applicable;

(4) Facility fax number, if applicable;

(5) Facility radio frequency, if applicable;

(6) Facility helideck rating and size, if applicable; and

(7) Facility records location if not contained on the facility.

§ 250.891 Safety device training.

You must ensure that personnel installing, repairing, testing, maintaining, and operating surface and subsurface safety devices, and personnel operating production platforms (including, but not limited to, separation, dehydration, compression, sweetening, and metering operations), are trained in accordance with the procedures in subpart O and subpart S of this part.

§§ 250.892–250.899 [Reserved]

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Part IV

Department of Transportation

National Highway Traffic Safety Administration
49 CFR Part 571
Federal Motor Carrier Safety Administration
49 CFR Part 393

Federal Motor Vehicle Safety Standards; Federal Motor Carrier Safety Regulations; Parts and Accessories Necessary for Safe Operation; Speed Limiting Devices; Proposed Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2016–0087]

RIN 2127–AK92

Federal Motor Carrier Safety Administration

49 CFR Part 393

[Docket No. FMCSA–2014–0083]

RIN–2126–AB63

Federal Motor Vehicle Safety Standards; Federal Motor Carrier Safety Regulations; Parts and Accessories Necessary for Safe Operation; Speed Limiting Devices

AGENCY: National Highway Traffic Safety Administration (NHTSA) and Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: NHTSA and FMCSA are proposing regulations that would require vehicles with a gross vehicle weight rating of more than 11,793.4 kilograms (26,000 pounds) to be equipped with a speed limiting device initially set to a speed no greater than a speed to be specified in a final rule and would require motor carriers operating such vehicles in interstate commerce to maintain functional speed limiting devices set to a speed no greater than a speed to be specified in the final rule for the service life of the vehicle.

Specifically, NHTSA is proposing to establish a new Federal motor vehicle safety standard (FMVSS) requiring that each new multipurpose passenger vehicle, truck, bus and school bus with a gross vehicle weight rating (GVWR) of more than 11,793.4 kilograms (26,000 pounds) be equipped with a speed limiting device. The proposed FMVSS would also require each vehicle, as manufactured and sold, to have its device set to a speed not greater than a specified speed and to be equipped with means of reading the vehicle's current speed setting and the two previous speed settings (including the time and date the settings were changed) through its On-Board Diagnostic connection.

FMCSA is proposing a complementary Federal motor carrier safety regulation (FMCSR) requiring each commercial motor vehicle (CMV) with a GVWR of more than 11,793.4 kilograms (26,000 pounds) to be equipped with a speed limiting device meeting the requirements of the proposed FMVSS applicable to the vehicle at the time of manufacture, including the requirement that the device be set to a speed not greater than a specified speed. Motor carriers operating such vehicles in interstate commerce would be required to maintain the speed limiting devices for the service life of the vehicle.

Based on the agencies' review of the available data, limiting the speed of these heavy vehicles would reduce the severity of crashes involving these vehicles and reduce the resulting fatalities and injuries. We expect that, as a result of this joint rulemaking, virtually all of these vehicles would be limited to that speed.

DATES: You should submit your comments early enough to ensure that the docket receives them not later than November 7, 2016.

ADDRESSES: You may submit comments, identified by one or both of the docket numbers in the heading of this document, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001
- *Hand Delivery or Courier:* 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the "Privacy Act" heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT:

NHTSA: For technical issues, you may contact Mr. Markus Price, Office of Vehicle Rulemaking, Telephone: (202) 366–1810. Facsimile: (202) 366–7002. For legal issues, you may contact Mr. David Jasinski, Office of Chief Counsel, Telephone (202) 366–2992. Facsimile: (202) 366–3820. You may send mail to these officials at: The National Highway Traffic Safety Administration, Attention: NVS–010, 1200 New Jersey Avenue SE., Washington, DC, 20590.

FMCSA: For technical issues, you may contact Mr. Michael Huntley, Vehicle and Roadside Operations, Telephone (202) 366–5370. Facsimile: (202) 366–8842. For legal issues, you may contact Mr. Charles Medalen, Office of Chief Counsel, Telephone (202) 366–1354. Facsimile: (202) 366–3602. You may send mail to these officials at: The Federal Motor Carrier Safety Administration, Attention: MC–PSV, 1200 New Jersey Avenue SE., Washington, DC 20590.

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I. Executive Summary

Studies examining the relationship between travel speed and crash severity have confirmed the common-sense conclusion that the severity of a crash increases with increased travel speed.[1] Impact force during a crash is related to vehicle speed, and even small increases in speed have large effects on the force of impact. As speed increases, so does the amount of kinetic energy a vehicle has. Because the kinetic energy equation has a velocity-squared term, the kinetic energy increase is exponential compared to the speed increase, so that even small increases in speed have large effects on kinetic energy. For example, a 5 mph speed increase from 30 mph to 35 mph increases the kinetic energy by one-third.[2] The effect is particularly relevant for combination trucks (*i.e.,* truck tractor and trailer) due to their large mass.[3] Additionally, higher speeds extend the distance necessary to stop a vehicle and reduce the ability of the vehicle, restraint device, and roadway hardware such as guardrails, barriers, and impact attenuators to protect vehicle occupants in the event of a crash.[4]

All vehicles with electronic engine control units (ECUs) are generally electronically speed governed to prevent engine or other damage to the vehicle. This is because the ECU monitors an engine's RPM (from which vehicle speed can be calculated) and also controls the supply of fuel to the engine. The information NHTSA has analyzed indicates that ECUs have been installed in most heavy trucks since 1999, although we are aware that some manufacturers were still installing mechanical controls through 2003. We seek comment on when ECUs with speed limiting capabilities became widely used for the other heavy vehicles covered by this proposal, such as buses and school buses.

The Department of Transportation has previously examined the issue of mandatory speed limitation for CMVs. In 1991, NHTSA published a report titled "Commercial Motor Vehicle Speed Control Devices," [5] in response to the Truck and Bus Safety and Regulatory Reform Act of 1988.[6] This report reviewed the problem of heavy vehicles traveling at speeds greater than 65 mph and these vehicles' involvement in "speeding-related" crashes.[7] At that time, the report found that combination trucks tended to travel at just over the posted speed limit. The report was supportive of fleet applications of speed monitoring and speed limiting devices, but concluded that, because of the small target population size as compared to the overall size of the population, there was not sufficient justification to require the application of speed limiting devices at that time.

Several factors have changed since the submission of the 1991 report, including the data on the target population, changes in the costs and technology of speed limiting devices, and the repeal of the national maximum speed limit law. These changes undermine the conclusions contained in the 1991 report and support our reexamination of this safety issue.

In 2006, NHTSA received a petition from the American Trucking Associations (ATA) to initiate a rulemaking to amend the Federal Motor Vehicle Safety Standards (FMVSS) to require vehicle manufacturers to limit the speed of trucks with a Gross Vehicle Weight Rating (GVWR) greater than 26,000 pounds to no more than 68 miles per hour (mph). Concurrently, the ATA petitioned the FMCSA to amend the Federal Motor Carrier Safety Regulations (FMCSR) to prohibit owners and operators from adjusting the speed limiting devices in affected vehicles above 68 mph. That same year, FMCSA received a petition from Road Safe America to initiate a rulemaking to amend the FMCSRs to require that all trucks manufactured after 1990 with a GVWR greater than 26,000 pounds be equipped with electronic speed limiting devices set at not more than 68 mph.

On January 26, 2007, NHTSA and FMCSA responded to these petitions in a joint Request for Comments notice in the **Federal Register**, seeking public comments on the petitions.[8] On January 3, 2011, NHTSA published a notice granting the petitions for rulemaking and announced that the agency would initiate the rulemaking process with an NPRM.[9]

Using Fatality Analysis Reporting System (FARS) and National Automotive Sampling System General Estimates System (NASS GES) crash data over the 10-year period between 2004 and 2013, the agencies examined crashes involving heavy vehicles (*i.e.,* vehicles with a GVWR of over 11,793.4 kg (26,000 pounds)) on roads with posted speed limits of 55 mph or above. The agency focused on crashes in which the speed of the heavy vehicle likely contributed to the severity of the crash (*e.g.,* single vehicle crashes, crashes in which the heavy vehicle was the striking vehicle). The agencies estimated that these crashes resulted in 10,440 fatalities[10] from 2004 to 2013. On an annual basis, the fatalities averaged approximately 1,044 during this period.

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[1] *See, e.g.,* Johnson, Steven L. & Pawar, Naveen, Mack-Blackwell Rural Transportation Center, College of Engineering, University of Arkansas, Cost-Benefit Evaluation of Large Truck-Automobile Speed Limits Differentials on Rural Interstate Highways, MBTC 2048 (Nov. 2005).

[2] Virginia Commonwealth University Safety Training Center Web site, *http://www.vcu.edu/cppweb/tstc/crashinvestigation/kinetic.html.*

[3] Johnson, Steven L. & Pawar, Naveen, Mack-Blackwell Rural Transportation Center, Cost-Benefit Evaluation of Large Truck-Automobile Speed Limits Differentials on Rural Interstate Highways, MBTC 2048 (Nov. 2005).

[4] Liu Cejun & Chen, Chou-Lin, NHTSA, An Analysis of Speeding-Related Crashes: Definitions and the Effects of Road Environments, DOT HS 811 090 (Feb. 2009).

[5] NHTSA, Commercial Motor Vehicle Speed Control Devices, DOT HS 807 725 (May 1991).

[6] Truck and Bus Safety and Regulatory Reform Act of 1988, Pub. L. 100–690, 102 Stat. 4527 (Nov. 18, 1988).

[7] For the purposes of the report, a vehicle was considered to be "speeding" if its estimated travel speed exceeded the posted speed limit.

[8] 72 FR 3904 (Jan. 26, 2007).

[9] 76 FR 78 (Jan. 3, 2011).

The agencies' analysis found that crashes involving heavy vehicles traveling faster are more deadly than crashes involving heavy vehicles traveling at lower speeds. Given this fact, NHTSA is proposing to require multipurpose passenger vehicles, trucks, buses and school buses, with a GVWR of more than 11,793.4 kilograms (26,000 pounds) to be equipped with a speed limiting device. As manufactured and sold, each of these vehicles would be required by NHTSA to have its device set to a speed not greater than a specified speed. NHTSA is proposing a lead time of three years from publication of a final rule for manufacturers to meet the proposed requirements.

FMCSA is proposing a complementary Federal Motor Carrier Safety Regulation (FMCSR) requiring multipurpose passenger vehicles, trucks, and buses and school buses with a GVWR of more than 11,793.4 kilograms (26,000 pounds) operating in interstate commerce to be equipped with a speed limiting device meeting the requirements of the proposed FMVSS applicable to the vehicle at the time of manufacture, including the requirement that the device be set to a speed not greater than the specified speed. Motor carriers operating such vehicles in interstate commerce would be required to maintain the speed limiting devices for the service life of the vehicle.

Vehicles with GVWRs above 26,000 pounds include multipurpose passenger vehicles, trucks, and buses and school buses and will be referred to as heavy vehicles within this notice. The purpose of this joint rulemaking is to reduce the severity of crashes involving these heavy vehicles and to reduce the number of resulting fatalities.

Since this NPRM would apply both to vehicle manufacturers and motor carriers that purchase and operate these vehicles, this joint rulemaking is based on the authority of both NHTSA and FMCSA.

NHTSA's legal authority for today's NPRM is the National Traffic and Motor Vehicle Safety Act (''Motor Vehicle Safety Act'').

FMCSA's portion of this NPRM is based on the authority of the Motor Carrier Act of 1935 (1935 Act) and the Motor Carrier Safety Act of 1984 (1984 Act), both as amended. The two acts are delegated to FMCSA by 49 CFR 1.87(i) and (f), respectively.

These legal authorities and the legal basis for the proposed FMCSR are discussed in more detail in Section II of this notice.

NHTSA is proposing that speed limiting device requirements apply to all multipurpose passenger vehicles, trucks and buses with a GVWR of more than 11,793.4 kg (26,000 pounds). NHTSA considered several factors in determining the GVWR threshold for the proposed FMVSS. These vehicles carry the heaviest loads, and small increases in their speed have larger effects on the force of impact in a crash. Additionally, many of these vehicles are regulated by FMCSA and its State partners, permitting the establishment of an FMCSR to ensure the enforcement of the speed limiting requirements throughout the life of the vehicles.

Although the petitions for rulemaking requested that NHTSA permit manufacturers to set the speed limiting device at any speed up to and including 68 mph, the agency has not proposed a specific set speed. In Section X of this document and in the Preliminary Regulatory Impact Analysis, Initial Regulatory Flexibility Analysis, and Draft Environmental Assessment accompanying this proposal, NHTSA has considered the benefits and costs of 60 mph, 65 mph, and 68 mph maximum set speeds.

The agencies estimate that limiting the speed of heavy vehicles to 60 mph would save 162 to 498 lives annually, limiting the speed of heavy vehicles to 65 mph would save 63 to 214 lives annually, and limiting the speed of heavy vehicles to 68 mph would save 27 to 96 lives annually. Although we believe that the 60 mph alternative would result in additional safety benefits, we are not able to quantify the 60 mph alternative with the same confidence as the 65 mph and 68 mph alternatives.

To determine compliance with the operational requirements for the speed limiting device (*i.e.,* that the vehicle is in fact limited to the set speed), NHTSA is proposing a vehicle-level test that involves accelerating the vehicle and monitoring the vehicle's speed. The proposed test procedure is substantially based on the United Nations Economic Commission for Europe (UNECE) regulation on vehicle speed limiting devices,[11] with several modifications discussed in detail later in this document.

In order to reduce additional potential costs to vehicle manufacturers, NHTSA is not proposing requirements to prevent tampering or restrict adjusting the speed setting as part of the proposed FMVSS. Instead, to deter tampering with a vehicle's speed limiting device or modification of the set speed above the specified maximum set speed after the vehicle is sold, the proposed FMVSS would be reinforced by the proposed FMCSR, which would require motor carriers to maintain the speed limiting devices at a set speed within the range permitted by the FMVSS. To assist FMCSA's enforcement officials with post-installation inspections and investigations to ensure compliance with the requirement to maintain the speed limiters, NHTSA is proposing to require that the vehicle set speed and the speed determination parameters be readable through the On-Board Diagnostic (OBD) connection.[12] In addition to the current speed limiter settings, NHTSA is proposing that the previous two setting modifications (*i.e.,* the two most recent modifications of the set speed of the speed limiting device and the two most recent modifications of the speed determination parameters) be readable and include the time and date of the modifications.

In addition to the new vehicle requirements included in this proposal, NHTSA is considering whether to require commercial vehicles with a GVWR of more than 26,000 pounds currently on the road to be retrofitted with a speed limiting device with the speed set to no more than a specified speed. The agency has not included a retrofit requirement in this proposal because of concerns about the technical feasibility, cost, enforcement, and small business impacts of such a requirement. However, we are seeking public comment to improve our understanding of the real-world impact of implementing a speed limiting device retrofit requirement. As an alternative to a retrofit requirement, the agencies are also requesting comment on whether to extend the set speed requirement only to all CMVs with a GVWR of more than 26,000 pounds that are already equipped with a speed limiting device.

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[10] The fatality numbers were also adjusted to reflect the effect of new heavy vehicle requirements that have been adopted by NHTSA within the last several years (*e.g.,* the final rule adopting seat belt requirements for passenger seats in buses (78 FR 70415 (Nov. 25, 2013), the final rule to adopt electronic stability control requirements for heavy vehicles (80 FR 36049 (June 23, 2015)).

[11] UNECE R89, Uniform provisions concerning the approval of: I. Vehicles with regard to limitation of their maximum speed or their adjustable speed limitation function; II. Vehicles with regard to the installation of a speed limiting device (SLD) or adjustable speed limitation device (ASLD) of an approved type; III. Speed limitation devices (SLD) and adjustable speed limitation device (ASLD)," E/ECE/324–E/ECE/TRANS/505//Rev. 1/Add. 88/Amend. 2 (January 30, 2011).

[12] Further information on the specification of the OBD connection is available at *http://www.epa.gov/obd/regtech/heavy.htm.*

Based on our review of the available data, limiting the speed of heavy vehicles would reduce the severity of crashes involving these vehicles and reduce the resulting fatalities and injuries. Because virtually all heavy vehicles are CMVs and would be subject to both the proposed FMVSS and the proposed FMCSR, we expect that, as a result of this joint rulemaking, virtually all heavy vehicles would be speed limited.

The agencies project that this joint rulemaking would be cost-beneficial. Specifically, by reducing the severity of crashes involving heavy vehicles, we estimate that limiting heavy vehicles to 68 mph would save 27 to 96 lives annually, limiting heavy vehicles to 65 mph would save 63 to 214 lives annually, and limiting heavy vehicles to 60 mph would save 162 to 498 lives annually.[13] Based on range of fatalities prevented, this rulemaking would prevent 179 to 551 serious injuries[14] and 3,356 to 10,306 minor injuries with a maximum set speed of 60 mph, 70 to 236 serious injuries and 1,299 to 4,535 minor injuries with a maximum set speed of 65 mph, and 30 to 106 serious injuries and 560 to 1,987 minor injuries with a maximum set speed of 68 mph.

Additionally, we project that this joint rulemaking would result in fuel savings and greenhouse gas (GHG) emissions reductions totaling of $848 million annually, assuming a 7 percent discount for fuel and a 3 percent discount rate for GHG, for 60 mph and 65 mph speed limiter settings.[15] For 68 mph speed limiters, we would expect fuel savings and GHG emissions reductions to result in benefits of $376 million annually.

The cost of the proposed FMVSS to vehicle manufacturers is expected to be minimal. As discussed above, most vehicles to which the proposed FMVSS would apply are already equipped with electronic engine controls which include the capability to limit the speed of the vehicle, but may not have these controls turned on automatically.

In addition to the costs to vehicle manufacturers, we have evaluated the societal cost implications of these proposed rules. We estimate that the proposed rules would cost $1,561 million for 60 mph speed limiters, $523 million for 65 mph speed limiters, and $209 million for 68 mph speed limiters $433 million annually, assuming a 7 percent discount rate, as a result of the potentially lower travel speeds and delay in the delivery of goods. However, the estimated fuel savings benefits of this proposed rule exceed these estimated societal costs.

The commercial trucking market fits the classic definition of a negative externality, in which benefits are enjoyed by one party, but the costs associated with that benefit are imposed on another. In this case, higher travel speeds may produce more severe traffic crashes that result in more death, more injury, and greater property damage. While the cost of excess fuel consumption is borne by the vehicle fleet operators, the resulting fatalities, greenhouse gases, and pollutants may be imposed on society. The agencies estimate that this rule would be cost-beneficial. Even assuming that the proposed rule would result in the high cost estimate and the low benefit estimate, the net benefits of this rulemaking are estimated to be $1.1 billion to $5.0 billion annually for 60 mph speed limiters, $1.0 billion to $2.8 billion annually for 65 mph speed limiters, and $0.5 to $1.3 billion annually for 68 mph speed limiters, assuming a 7 percent discount rate.

TABLE 1—ANNUAL TOTAL BENEFITS, 7% DISCOUNT

[In millions of 2013 dollars *]

Benefits	60 mph		65 mph		68 mph	
	Low estimate	High estimate	Low estimate	High estimate	Low estimate	High estimate
Combination Trucks	$2,571	$6,134	$1,458	$3,074	$640	$1,384
Single-unit trucks	105	230	85	128	36	53
Buses	20	159	21	79	8	32
Total	2,695	6,522	1,564	3,281	684	1,469

* Numbers were rounded to the nearest integer.

TABLE 2—ANNUAL COSTS, 7% DISCOUNT ASSOCIATED WITH INCREASED DELIVERY TIME

[In millions of 2013 dollars]

	60 mph	65 mph	68 mph
Cost	$1,534	$514	$206

TABLE 3—OVERALL NET BENEFITS TO HEAVY VEHICLE INDUSTRIES ASSOCIATED WITH SPEED LIMITERS, 7% DISCOUNT

[In millions, 2013 dollars] *

Vehicle	60 mph		65 mph		68 mph	
	Minimum	Maximum	Minimum	Maximum	Minimum	Maximum
Total Benefits	$2,695	$6,522	$1,564	$3,281	$684	$1,469

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[13] Although we believe that the 60 mph alternative would result in additional safety benefits, we are not able to quantify the 60 mph alternative with the same confidence as the 65 mph and 68 mph alternatives.

[14] The fatality-to-injury ratios for AIS 3, AIS 4, and AIS 5 injuries coincidentally add up to 1. Accordingly, the number of serious injuries prevented (AIS 3–5) is estimated to be equivalent to the number of fatalities. Please consult the PRIA for additional discussion on how the agencies estimated the injuries prevented.

[15] For internal consistency and because of the way the social cost of carbon is estimated, the annual benefits are discounted back to net present value using the same discount rate as the social cost of carbon estimate (3 percent) rather than 3 percent and 7 percent. Please refer to Section X for additional information.

TABLE 3—OVERALL NET BENEFITS TO HEAVY VEHICLE INDUSTRIES ASSOCIATED WITH SPEED LIMITERS, 7% DISCOUNT—Continued

[In millions, 2013 dollars] *

Vehicle	60 mph		65 mph		68 mph	
	Minimum	Maximum	Minimum	Maximum	Minimum	Maximum
Total Costs	1,561	1,561	523	523	209	209
Net Benefit	1,136	4,964	1,039	2,757	475	1,260

* The estimates may not add up precisely due to rounding.

The agencies seek comments and suggestions on any alternative options that would lower cost and maintain all or most of the benefits of the proposal, as well as information relative to a phase-in of the proposed requirements or alternatives to our proposed three-year lead time for manufacturers to meet the requirements of the new FMVSS.

II. Legal Basis

Since this NPRM would apply both to vehicle manufacturers and motor carriers that purchase and operate these vehicles, this rulemaking is based on the authority of both NHTSA and FMCSA.

NHTSA's legal authority for today's NPRM is the National Traffic and Motor Vehicle Safety Act ("Motor Vehicle Safety Act"). Under 49 U.S.C. Chapter 301, Motor Vehicle Safety (49 U.S.C. 30101 *et seq.*), the Secretary of Transportation is responsible for prescribing motor vehicle safety standards that are practicable, meet the need for motor vehicle safety, and are stated in objective terms.[16] "Motor vehicle safety standard" means a minimum performance standard for motor vehicles or motor vehicle equipment. When prescribing such standards, the Secretary must consider all relevant, available motor vehicle safety information.[17] The Secretary must also consider whether a proposed standard is reasonable, practicable, and appropriate for the types of motor vehicles or motor vehicle equipment for which it is prescribed and the extent to which the standard will further the statutory purpose of reducing traffic accidents and associated deaths.[18] The responsibility for promulgation of FMVSS is delegated to NHTSA. In proposing to require that heavy vehicles be equipped with speed limiting devices and that these devices initially be set to a speed not greater than a maximum specified speed by the manufacturer, the agency carefully considered these statutory requirements.

Mandating speed limiting devices in heavy vehicles and requiring that those devices be set at speeds not greater than a maximum specified speed would meet the need for motor vehicle safety by reducing the severity of crashes involving heavy vehicles and reducing the number of fatalities and injuries that result from such crashes. These safety benefits are summarized above and discussed in more detail below in Section X. The proposed FMVSS would be practicable because the vehicles that would be subject to the requirements already have speed-limiting capability. The proposed FMVSS also contains objective performance criteria for evaluating the required speed limiting device, including a vehicle test procedure based on a United Nations Economic Commission for Europe (UNECE) test procedure, specification of the type of setting information that must be retrievable (*i.e.,* the current speed setting and speed determination parameters as well as the last two modifications of each) and the means by which such information must be retrievable (*i.e.,* through the OBD connection). As described above, NHTSA decided to focus on vehicles with a GVWR above 26,000 pounds and believes that the proposed requirements are appropriate for these vehicles because they carry the heaviest loads and because small increases in their speed have larger effects on the force of impact in a crash. Additionally, these vehicles are regulated by FMCSA and its State partners, permitting the establishment of an FMCSR to ensure the enforcement of the speed limiting requirements throughout the life of the vehicles.

FMCSA's portion of this NPRM is based on the authority of the Motor Carrier Act of 1935 (1935 Act) and the Motor Carrier Safety Act of 1984 (1984 Act), both as amended. The two acts are delegated to FMCSA by 49 CFR 1.87(i) and (f), respectively.

The 1935 Act authorizes the Department of Transportation (DOT) to "prescribe requirements for — (1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operations" [49 U.S.C. 31502(b)].

The 1984 Act confers on DOT authority to regulate drivers, motor carriers, and vehicle equipment. "At a minimum, the regulations shall ensure that—(1) commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely . . . ; and (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators" [49 U.S.C. 31136(a)(1)–(4)]. Sec. 32911 of the Moving Ahead for Progress in the 21st Century Act (MAP–21) [Pub. L. 112–141, 126 Stat. 405, July 6, 2012] enacted a fifth requirement, *i.e.,* to ensure that "(5) an operator of a commercial motor vehicle is not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a commercial motor vehicle in violation of a regulation promulgated under this section, or chapter 51 [Transportation of Hazardous Material] or chapter 313 [Commercial Motor Vehicles Operators] of this title" [49 U.S.C. 31136(a)(5)].

The 1935 Act authorizes regulations on the "safety of operations and equipment" of a for-hire carrier and "standards of equipment" of a private carrier, "when needed to promote safety" [49 U.S.C. 31502(b)(1)–(2)]. Speed limiting devices constitute safety equipment, as the preamble of this proposed rule amply demonstrates, and the 1935 Act therefore authorizes FMCSA to require that such equipment be maintained as long as the vehicle is in service.

Because NHTSA is proposing to require vehicle manufacturers to equip every new multipurpose passenger vehicle, truck, and bus with a gross vehicle weight rating (GVWR) of more than 11,739.4 kilograms (26,000 pounds), FMCSA proposes to require motor carriers operating such vehicles in interstate commerce to maintain functional speed limiting devices set at not more than the maximum specified speed for the service life of the vehicle. Two provisions of the 1984 Act are immediately relevant. A speed limiting device installed to improve safety must be "maintained," as required by § 31136(a)(1), to ensure that its benefits are actually realized in normal operations. Properly maintained speed limiting devices will also ensure that "the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely" [§ 31136(a)(2)] in the sense that drivers cannot be ordered to drive more than the maximum set speed.

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[16] 49 U.S.C. 30111(a).

[17] 49 U.S.C. 30111(b).

[18] Id.

The proposed rule does not directly address § 31136(a)(3), dealing with the physical condition of the driver, or § 31136(a)(4), concerning the effect of driving on the physical condition of operators. However, the proposed rule would significantly reduce the consumption of diesel fuel (which is used by most vehicles heavier than 26,000 pounds), with corresponding reductions in exhaust emissions. The effect on the health of drivers (and others) from exposure to diesel exhaust is difficult to estimate in the absence of a dose/response curve, significant changes in the chemical composition of diesel fuel over the years, and the presence of confounding factors like smoking [*see,* "Hours of Service of Drivers," 70 FR 49978, 49983–49987, August 25, 2005]. Nonetheless, reducing the total volume of exhaust emissions will likely have some beneficial effect on the health of many individuals, including drivers. This issue is discussed further in the Draft Environmental Assessment prepared for this NPRM.

Finally, consistent with § 31136(a)(5), a working speed limiting device will make it more difficult for a "motor carrier, shipper, receiver, or transportation intermediary" to coerce a driver to exceed highway speed limits in violation of the regulatory requirements of 49 CFR 392.2 and 392.6.

The 1984 Act confers jurisdiction over "commercial motor vehicles" (CMVs) operating in interstate commerce. The term CMV includes 4 alternative definitions: A minimum weight of 10,001 pounds gross vehicle weight (GVW) or GVWR, whichever is greater [49 U.S.C. 31132(1)(A)]; two different capacity thresholds for different types of passenger vehicle operation [§ 31132(1)(B)–(C)]; or the transportation of placardable quantities of hazardous material [§ 31132(1)(D)]. NHTSA proposes to require manufacturers to install speed limiting devices only on vehicles with a GVWR above 26,000 pounds. FMCSA has no authority to regulate vehicle manufacturers [49 U.S.C. 31147(b)] but proposes to require operators of CMVs covered by the NHTSA requirement who use the vehicles in interstate commerce to maintain speed limiting devices at the same level of effectiveness as the original equipment, irrespective of the CMV's passenger capacity or use to transport placardable quantities of hazardous material.

Before prescribing any regulations, FMCSA must also consider their "costs and benefits" [49 U.S.C. 31136(c)(2)(A) and 31502(d)]. Those factors are discussed in this proposed rule.

III. Background

A. Speed Limiting Technology

All vehicles with electronic engine control units (ECUs) are electronically speed limited to prevent general damage to the vehicle. This is because the ECU monitors an engine's RPM and also controls the supply of fuel to the engine. Available information indicates that ECUs have been installed in most heavy trucks since 1999, though we are aware that some manufacturers were still installing mechanical controls through 2003.[19] In addition, it appears that the practice of voluntarily setting the speed limiting devices, most often at speeds from 60 to 70 mph, has grown in recent years. Some trucking fleets use ECUs to limit the speed of their trucks in order to reduce the number of speed-related crashes, reduce fuel consumption, and reduce maintenance costs.

B. NHTSA's 1991 Report to Congress on CMV Speed Control Devices

Section 9108 of the Truck and Bus Safety and Regulatory Reform Act of 1988 required the Secretary of Transportation to conduct a study on whether devices that control the speed of CMVs enhance safe operation of such vehicles and to submit to Congress a report on the results of the study together with recommendations on whether to make the use of speed control devices mandatory for CMVs.[20]

In response to this Act, NHTSA published a Report to Congress titled "Commercial Motor Vehicle Speed Control Safety."[21] This report reviewed the problem of heavy vehicle speeding (in particular, at speeds greater than 65 mph, which was the maximum rural Interstate speed limit at the time) and "speeding-related" crash involvements.[22] The report described and assessed devices available to control truck speed, and addressed the mandatory use of speed control devices by heavy trucks. The report stated that, by all measures of crash involvement, speeding was not a significant factor in the crashes involving single-unit trucks. Thus, most of the report addressed combination trucks, which presented a more complex picture.

The report described the results of non-detectable radar studies that showed that highway speed limit compliance by combination trucks was poor but better than that of passenger vehicles. In the non-detectable radar studies examined in the report, most trucks that were found to be speeding were traveling at just over the posted speed limit. Crash statistics indicated that speeding was generally less associated with combination truck crashes than it was with passenger vehicle crashes. The report described devices available to control truck speed and ways that they were applied in commercial fleet settings. The report was supportive of fleet applications of speed monitoring devices and speed limiting devices but at that time concluded that there was not sufficient justification to consider requiring all heavy trucks to be so equipped due to the small number of target crashes and uncertainties regarding the potential for crash reduction, which suggested that the benefits of mandatory speed limitation were questionable. Specifically, problem size statistics[23] suggested that the number of target crashes was low, *e.g.,* approximately 30 fatal crash involvements per year for combination trucks. The report also noted that all speeding-related crash statistics cited in the report used the categorization "speeding-related" or "high-speed-related," but that these terms did not necessarily mean that speeding was the primary cause of the crash or any resulting fatalities. The report stated that virtually all crashes involve multiple contributing factors and that the elimination of any one factor—*e.g.,* high speed—may or may not prevent the crash. Thus, the report viewed the identified speeding-related and high-speed-related crashes as only potential target crashes for speed control devices. The report concluded that although speed control devices (if not tampered with) were likely to reduce the highway speeds of those trucks that do speed, their effectiveness in preventing and/or reducing the severity of these potential target crashes was unknown.

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[19] Hino Motors indicated in its comments to the 2007 Request for Comments that it manufactured mechanically controlled vehicles through model year 2003.

[20] Truck and Bus Safety and Regulatory Reform Act of 1988, Pub. L. 100–690, 102 Stat. 4527, 4530 (Nov. 18, 1988).

[21] NHTSA, Commercial Motor Vehicle Speed Control Safety, DOT HS 807 725 (May 1991). A copy of this report has been placed in the docket.

[22] For the purposes of the report, a vehicle was considered to be "speeding" if its estimated travel speed exceeded the posted speed limit.

[23] For the purposes of the 1991 report, the "problem size" included crashes where the Police Accident Report indicated speeding at a speed greater than 70 mph.

C. Petitions for Rulemaking

1. American Trucking Associations (ATA) Petition

On October 20, 2006, the ATA submitted a petition to NHTSA, pursuant to 49 CFR 552.3, to initiate a rulemaking to amend the FMVSS to require vehicle manufacturers to limit the speed of trucks with a GVWR greater than 26,000 pounds to no more than 68 mph.[24] Concurrently, the ATA petitioned FMCSA, pursuant to 49 CFR 389.31, to initiate a rulemaking to amend the FMCSR to prohibit owners and operators from adjusting the speed limiting devices in affected vehicles in a way that enables the vehicles to exceed a speed of 68 mph.

The ATA stated that reducing speed-related crashes involving trucks is critical to the safety mission of both NHTSA and FMCSA, and that the requested requirements are necessary in order to reduce the number and severity of crashes involving large trucks. ATA's petition stated:

> A lack of focus on speed as a causal or significant contributing factor in crashes involving large trucks represents a significant gap in the federal government's truck safety strategy. While much of the federal truck safety budget has focused on ensuring the safe condition of equipment, on driver fatigue, and on prevention of impaired driving, it is clear from the research that speeding is a more significant factor in crashes involving trucks than any of the factors that currently receive the largest proportion of agency attention and resources.

The "Justification" section of ATA's petition also stated:

> ATA analyzed five years of fatal truck-involved crash data. We found that in 20 percent of truck-involved fatal crashes where speeding on the part of the truck driver was cited as a factor in the crash, and the truck's speed was recorded, the speed of the truck exceeded 68 mph. However, because the truck's speed is reported by investigating officers in only about half of truck-involved fatal crashes, it is impossible to determine the actual number of potential crashes that might be avoided by limiting top truck speed to 68 mph. However, reasonable assumptions can be made and ATA believes the number of fatal crashes that could be avoided is significant.

The ATA stated in its petition that reducing the speed of trucks will likely reduce both the number and severity of crashes, although ATA did not quantify injury or fatality reduction benefits. The ATA also stated that the reduced number of crashes, resulting from the lower speed for trucks, will reduce congestion, thereby reducing societal costs associated with the loss of productivity that occurs when vehicles have been disabled in a crash or delayed at a crash site.

According to the ATA, there will be little or no cost increase for truck and truck tractor manufacturers associated with limiting the maximum speed since speed limiting devices are already installed on these vehicles during manufacture as a feature of the electronic engine control unit. Also, the ATA contended that the cost to carriers for the increase in time required to complete a delivery will be offset by savings in fuel consumption, fewer crashes, and less equipment wear.

2. Road Safe America Petition

On September 8, 2006, Road Safe America, a public safety interest group, and a group of nine motor carriers[25] petitioned FMCSA to amend the FMCSRs to require (1) electronic speed governors on all trucks with a GVWR over 26,000 pounds, (2) that these electronic speed governors be set at not more than 68 mph, and (3) that all trucks manufactured after 1990 be equipped with such electronic speed governors.[26] The Road Safe America petition stated that the proposal to limit truck speed to 68 mph would reduce the number of truck collisions and save lives. According to Road Safe America, limiting truck speed to 68 mph will have an immediate and uniform impact with little or no detrimental effect on the lawful operation of CMVs.

D. Request for Comment

On January 26, 2007, NHTSA and FMCSA published a joint Request for Comments notice in the **Federal Register** (72 FR 3904) seeking public comments on the ATA and Road Safe America petitions. This notice included a summary of the ATA and Road Safe America petitions, a review of heavy truck crash statistics, a brief summary of the 1991 NHTSA Report to Congress on Commercial Vehicle Speed Control Devices, and a request for specific information concerning the appropriateness of a Federal regulation limiting the speed of large trucks to 68 mph. The notice discussed how NHTSA is responsible for developing and issuing FMVSSs that establish minimum safety requirements for motor vehicles sold in the United States, and that if NHTSA ultimately established requirements to equip trucks with speed limiting devices as requested, FMCSA would initiate a rulemaking proceeding to amend the FMCSRs as necessary to ensure that trucks are equipped and maintained with a speed limiting device meeting the requirements specified in the applicable FMVSS.

The Agencies received over 3,000 comments in response to the Request for Comments, mostly from private citizens and small businesses.[27] Of these, many supported a regulation that would limit the speed of large trucks to 68 mph, including trucking fleets and consumer advocacy groups. Other comments submitted by independent owner-operator truckers, one trucking fleet association, and private citizens were opposed to the rulemaking approach requested in the petitions.

Supported

Comments from private citizens and small organizations supporting the petitions include responses from individuals who were involved in crashes with heavy trucks or had friends or relatives who were killed or severely injured in crashes with large trucks. The private citizen supporters of the petitions include non-truck drivers who stated they are intimidated by the hazardous driving practices of some truck drivers, such as speeding, tailgating, and abrupt lane changes. These comments expressed the belief that limiting the speed of heavy trucks to 68 mph would result in safer highways, and several private citizens recommended that trucks be limited to 65 mph rather than 68 mph.

Trucking organizations and safety groups supported the petition for similar reasons, and the comments summarized below represent the range of issues they addressed.

Schneider National, Inc. (Schneider), a motor carrier with a sizeable trucking fleet, indicated that its trucks have had speed limiting devices set to 65 mph since 1996. According to Schneider's crash data involving its own fleet, vehicles without speed limiting devices accounted for 40 percent of the company's serious collisions while driving 17 percent of the company's total miles. Schneider stated that its vehicles have a significantly lower crash rate than large trucks that are not speed limited or have a maximum speed setting greater than 65 mph.

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[24] Docket No. NHTSA–2007–26851–0005.

[25] The nine motor carriers who cosigned the Road Safe America petition are Schneider National, Inc., C.R. England, Inc., H.O. Wolding, Inc., ATS Intermodal, LLC, Dart Transit Company, J.B. Hunt Transport, Inc., U.S. Xpress, Inc., Covenant Transport, Inc., and Jet Express, Inc.

[26] Docket Nos. NHTSA–2007–265.281–0001, NHTSA–2007–265.281–0002.

[27] Docket No. NHTSA–2007–26851, available at *http://www.regulations.gov/#!docketDetail;D=NHTSA-2007-26851*).

J.B. Hunt Transport, Inc. (J. B. Hunt), another large trucking fleet, commented that a differential speed between cars and large trucks will result from trucks being equipped with speed limiting devices set below the posted speed limit. This speed differential may cause a safety hazard; however, J.B. Hunt believes that the current safety hazard caused by large trucks traveling at speeds in excess of posted limits is of greater concern.

Advocates for Highway and Auto Safety (Advocates) commented that large trucks require 20 to 40 percent more braking distance than passenger cars and light trucks for a given travel speed. Advocates also indicated that it did not believe that the data in the agency's 1991 Report to Congress are still valid because the speed limits posted by the States over the past ten years are much higher than the national posted speed limit of 65 mph that was in effect in 1991.[28]

The Insurance Institute for Highway Safety (IIHS) stated on-board electronic ECUs will maintain the desired speed control for vehicles when enforcement efforts are not sufficient due to lack of resources. IIHS stated that there is already widespread use of speed governors by carriers and a mandate will result in net safety and economic benefits. IIHS asserted that limiting trucks to 68 mph would enhance safety but that limiting the vehicles to speeds below 68 mph would be safer.

The Governors Highway Safety Association (GHSA) commented that large trucks are over-represented in motor vehicle crashes, stating that, based on 2004 data, large trucks were 3 percent of registered vehicles and represented about 8 percent of the total miles traveled nationwide, but were involved in 12 percent of traffic fatalities. GHSA stated that conventional approaches to vehicle speed control do not provide optimal benefits because of limited enforcement resources and the large number of miles of highway to cover. Accordingly, GHSA stated that it is prudent to consider requiring speed-limiting devices since they are currently installed in large trucks and can be adapted to be tamper-resistant.

Several comments, including those from ATA's Technology & Maintenance Council, provided information concerning economic, non-safety benefits that would result from requiring large trucks to be speed limited. The Technology & Maintenance Council stated that an increase of 1 mph results in a 0.1 mpg increase in fuel consumption, and for every 1 mph increase in speed over 55 mph, there is a reduction of 1 percent in tire tread life.

Opposed

Comments opposing the petitions were received from many independent truck drivers, the Owner-Operator Independent Drivers Association (OOIDA), the Truckload Carriers Association (TCA), and private citizens (non-truck drivers).

OOIDA asserted that mandating speed limiting devices would not reduce the number of crashes involving heavy trucks. Specifically, OOIDA commented that the agency's 1991 Report to Congress is still valid today—asserting there is no need to mandate speed limiting devices because the target population (high speed crashes) is still small compared to the total number of truck crashes. According to OOIDA, speed limiting devices would not have an effect on crashes in areas where the posted speed limit for trucks is 65 mph or below. OOIDA believes that the petitioners are attempting to force all trucks to be speed-limited so that the major trucking companies with speed-limited vehicles will not be forced to compete for drivers against independent trucking operations that have not limited their speeds to 68 mph or below. OOIDA also questioned the magnitude of the fuel economy benefits that would be realized with speed limiting devices and stated that it is not necessary to set large truck speed limiting devices at 68 mph to realize most of the economic benefits cited by the petitioners, because improved fuel economy and reduced emissions can be achieved with improved truck designs. OOIDA also stated that driver compensation and the lack of entry level driver training contribute to the problem of driving at excessive speeds.[29]

TCA and OOIDA both commented that a speed differential will be created in many states by the 68 mph speed limit for heavy trucks and a higher speed limit for other vehicles. This speed differential could result in more interaction between cars and trucks, thus posing an additional safety risk for cars and trucks.

Other Issues

According to comments from CDW Transport, a trucking fleet, speed limiting devices should be required on passenger vehicles as well as CMVs.

Several comments from private citizens and small businesses opposed to the petitions stated that speed is not the only cause of crashes—that weather and highway conditions are also significant factors. There were some comments stating that passenger vehicles cause the majority of the crashes between trucks and passenger vehicles. Some commenters stated that truck drivers will experience more fatigue with a 68-mph maximum speed, which could result in more crashes. Others expressed the opinion that State and local law enforcement agencies should enforce the speed of all vehicles on the nation's roads and highways, while some commenters favored a 75-mph limit for truck speed limiting devices, instead of 68 mph, to match the highest posted speed limit in the country.

The Truck and Engine Manufacturers Association (EMA)[30] provided information concerning the cost of tamper-proof speed limiting devices for large trucks. EMA estimates a one-time cost of $35 million to $50 million would be required to develop ECUs with tamper-resistant speed limiting devices and a one-time cost of $150 million to $200 million to develop ECUs with tamper-proof speed limiting devices. With both of these ECU designs, there would be additional costs to make adjustments to the ECU for maximum speed, tire size, and drive axle and transmission gear ratio information.

E. NHTSA Notice Granting Petitions

On January 3, 2011, NHTSA published a notice granting the two speed limiting device-related petitions.[31] Based on information received in response to a request for comments, we stated that these petitions merit further consideration through the rulemaking process. In addition, because the petitions involved overlapping issues, NHTSA stated that it would address them together in a single rulemaking. Finally, the agency noted that the determination of whether to issue a rule would be made in the course of the rulemaking proceeding, in accordance with statutory criteria.

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[28] We agree with Advocates that the conclusions of our 1991 report are no longer valid, and have discussed this issue in detail in the section titled "Applicability of the 1991 Report to Congress on Heavy Speed Limiters."

[29] FMCSA notes that Section 32305 of MAP–21 requires the agency to complete a rulemaking requiring entry-level training for all drivers seeking a commercial driver's license (CDL).

[30] In 2011, the Engine Manufacturers Association, which includes the Truck Manufacturers Association, announced a new joint name for the organization, the Truck and Engine Manufacturers Association.

[31] 76 FR 78 (Jan. 3, 2011).

F. FMCSA Research—Speed Limiting Device Installation on CMVs

In March 2012, FMCSA published a research report on a study intended to identify the safety impacts of implementing speed limiting devices in commercial vehicle fleet operation.[32] The FMCSA study focused on the reduction in truck crashes that could have been avoided and/or mitigated with an active speed limiting device installed. This was the first study to use actual crash data collected directly from truck fleets, representing a wide array of crashes. More specifically, the study included data from 20 truck fleets, including approximately 138,000 trucks, and it analyzed more than 15,000 crashes. The findings showed strong positive benefits for speed-limited trucks. In terms of safety benefits, results indicated that trucks equipped with speed limiting devices had a statistically significant lower speed-limited-relevant crash rate compared to trucks without speed limiting devices (1.6 crashes per 100 trucks/year versus 2.9 crashes per 100 trucks/year).

FMCSA's Compliance, Safety, and Accountability Program [33] (CSA) addresses the issue of speeding-related crashes through its Unsafe Driving BASIC. This BASIC is a strong predictor of crash rates, although not the severity of crashes.

The FMCSA report focused on the effectiveness of a set speed limiter in avoiding crashes. Because this research relied on fleets to report crashes, a level of uncertainty was introduced based on varying reporting techniques. Additional uncertainty was introduced because of difficulties in establishing comparable routes in order to balance risk exposure. While the FMCSA study was large, the agencies are using a distinctively different approach for the estimation of benefits that includes 10 years of crash data analysis. As described later in this notice, NHTSA has examined actual crashes and the severity of those crashes at various speeds to estimate the safety benefits of reducing crash speeds. While NHTSA's approach to estimating the safety benefits is more conservative, the agency has greater confidence that the benefits demonstrated in our approach will be fully realized because of our approach's ability to more effectively isolate the effects of speed reduction on safety.

IV. Heavy Vehicle Speed Related Safety Problem

A. Heavy Vehicle Crashes at High Speeds

Studies examining the relationship between travel speed and crash severity have concluded that the severity of a crash increases with increased travel speed.[34] Impact force during a crash is related to vehicle speed, and even small increases in speed have large effects on the force of impact. As speed increases, so does the amount of kinetic energy a vehicle has. Because the kinetic energy equation has a velocity-squared term, the kinetic energy increase is exponential compared to the speed increase, so that even small increases in speed have large effects on kinetic energy. For example, a 5 mph speed increase from 30 mph to 35 mph increases the kinetic energy by one-third.[35] The effect is particularly relevant for combination trucks (*i.e.*, truck tractor and trailer) due to their large mass.[36] Additionally, higher speeds extend the distance necessary to stop a vehicle and reduce the ability of the vehicle, restraint device, and roadway hardware such as guardrails, barriers, and impact attenuators to protect vehicle occupants in the event of a crash.[37]

In evaluating the role travel speed plays in heavy vehicle crashes, the agencies used FARS and GES crash data over the 10-year period between 2004 and 2013 to examine crashes involving heavy vehicles (*i.e.*, vehicles with a GVWR of over 11,793.4 kg (26,000 pounds)) on roads with posted speed limits of 55 mph or above. The agency focused on crashes in which the speed of the heavy vehicle likely contributed to the severity of the crash (*e.g.*, single vehicle crashes, crashes in which the heavy vehicle was the striking vehicle). The agencies estimated that these crashes resulted in 10,440 fatalities [38] from 2004 to 2013 (approximately 1,044 annually).

Among the 10,440 fatalities, 9,747 resulted from crashes involving combination trucks, 442 resulted from crashes involving single unit trucks and the remaining 251 resulted from crashes involving buses.

TABLE 4—ADJUSTED FATAL TARGET POPULATION BASED ON FARS, CRASH AND OCCUPANT COUNTS

[For vehicles with a GVWR greater than 11,793 kg (26,000 lbs.), 10 years, 2004–2013]

Combination truck		Single unit truck		Bus	
Crash counts	Person counts	Crash counts	Person counts	Crash counts	Person counts
9,285	9,747	417	442	194	251

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[32] Hanowski, R. et al., Research on the Safety Impacts of Speed Limiter Device Installations on Commercial Motor Vehicles: Phase II, FMCSA–RRR–12–006, March 2012, available at *http://ntl.bts.gov/lib/51000/51300/51361/Speed-Limiters.pdf*

[33] *http://csa.fmcsa.dot.gov/.*

[34] Johnson, Steven L. & Pawar, Naveen, Mack-Blackwell Rural Transportation Center, Cost-Benefit Evaluation of Large Truck-Automobile Speed Limits Differentials on Rural Interstate Highways, MBTC 2048 (Nov. 2005).

[35] Virginia Commonwealth University Safety Training Center Web site, *http://www.vcu.edu/cppweb/tstc/crashinvestigation/kinetic.html.*

[36] Johnson, Steven L. & Pawar, Naveen, Mack-Blackwell Rural Transportation Center, Cost-Benefit Evaluation of Large Truck-Automobile Speed Limits Differentials on Rural Interstate Highways, MBTC 2048 (Nov. 2005).

[37] Liu Cejun & Chen, Chou-Lin, NHTSA, An Analysis of Speeding-Related Crashes: Definitions and the Effects of Road Environments, DOT HS 811 090 (Feb. 2009).

[38] The fatality numbers were also adjusted to reflect the effect of new heavy requirements that have been adopted by NHTSA within the last several years (*e.g.*, the final rule adopting seat belt requirements for passenger seats in buses (78 FR 70415 (Nov. 25, 2013), the final rule to adopt electronic stability control requirements for heavy vehicles (80 FR 36049 (June 23, 2012).

B. NTSB Motorcoach Speed-Related Crash Investigation

In addition to examining the FARS and NASS GES data relating to fatal heavy vehicle crashes, the agencies reviewed the National Transportation Safety Board (NTSB) Accident Reports to better understand the details surrounding high-speed crashes involving motorcoaches. The agencies identified one motorcoach crash in which excessive vehicle speed was cited as a major safety risk. The crash occurred on U.S. Route 163, in Mexican Hat, Utah, on January 6, 2008.[39] Nine passengers were fatally injured and 43 passengers and the driver sustained injuries.

As part of the crash investigation, NTSB conducted a vehicle speed analysis and estimated that the motorcoach was likely traveling 88 mph at the time of the crash. Although the motorcoach had a speed-limiting device with a maximum speed of 72 mph, NTSB determined that the motorcoach was capable of achieving a higher speed while in 10th gear when going downhill.

Based on the facts surrounding this crash, this incident does not necessarily demonstrate the safety risk that speed-limiting devices are meant to address. Existing speed-limiting devices regulate a vehicle's speed by monitoring the engine's RPM and controlling the supply of fuel to the engine, but do not limit the downhill speed of a vehicle. Although today's proposal would not necessarily limit speed on downhill portions of roadways, we are requesting comments on whether a device that could limit speeds in such a situation is technically feasible.

V. Applicability of NHTSA's 1991 Report to Congress on CMV Speed Control Devices

As discussed above, in 1991, NHTSA published a report titled "Commercial Motor Vehicle Speed Control Devices."[40] This report reviewed the problem of commercial vehicle operations at speeds greater than 65 mph and these vehicles' involvement in speed-related crashes. The report found that combination trucks tended to travel at just over the posted speed limit. The report was supportive of fleet applications of speed monitoring and speed-limiting devices but concluded that, because of the small target population size, there was not sufficient justification to require the application of speed-limiting devices at that time.

In response to the two petitions received by NHTSA, we reexamined the report and determined that several factors have changed since its submission in 1991, including data on the target population, changes in the costs and technology of speed limiting devices, and the repeal of the national maximum speed limit law. These changes undermine the conclusions contained in the 1991 report.

The 1991 report focused on the crash involvement rate of heavy vehicles. The report estimated 39 fatalities annually involving combination trucks traveling in excess of 70 mph. However, the report stated that NHTSA was unable to determine whether the reduction in heavy vehicle travel speeds would actually reduce the crash risk (or resulting fatality risk) of these vehicles significantly, since other, non-speed-related factors might still have occurred to cause the crashes. The report determined that the incremental benefits of mandatory speed limiting devices were questionable.

As described in more detail below and in the Preliminary Regulatory Impact Analysis (PRIA) that accompanies this NPRM, included in the docket, the agencies have analyzed more recent data from 2004 to 2013 in order to determine the potential benefits of limiting the maximum speed of vehicles with a GVWR of over 11,793.4 kg (26,000 pounds). Instead of focusing on the effect of such devices on crash involvement rate, we have focused on their effect on crash severity and used this approach to isolate the effect of speed on the fatal crash rate. Accordingly, this methodology allows us to estimate with greater certainty the lives that can be saved by electronically setting the maximum speed of vehicles with a GVWR of over 11,793.4 kg (26,000 pounds). Additionally, the 1991 report detailed the mechanisms for limiting speed available at that time and their associated costs. While the report accurately predicted the proliferation of electronically-controlled engines capable of limiting speed, it also noted the high cost of installing mechanical engine speed governors on vehicles. The available information indicates that electronically-controlled engines have been installed in most heavy trucks since 1999, though we are aware that some manufacturers were still installing mechanical controls through 2003. Accordingly, many of the equipment cost concerns discussed in the 1991 report are inapplicable today.

Finally, during the time the 1991 report was being developed, the maximum speed limit in the U.S. was 55 mph.[41] The national speed limit was repealed in 1995.[42] Examining current State speed limits, the maximum posted speed limits for trucks vary between 55 and 85, with 35 States having a maximum posted truck speed limit above 65 mph.[43]

- 55 mph: California, District of Columbia
- 60 mph: Hawaii, Michigan, Washington
- 65 mph: Alaska, Connecticut, Delaware, Indiana, Massachusetts, Montana, New Jersey, New York, Oregon, Rhode Island, Vermont
- 70 mph: Alabama, Arkansas, Florida, Georgia, Idaho, Illinois, Iowa, Kentucky, Maryland, Minnesota, Mississippi, Missouri, New Hampshire, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, Wisconsin
- 75 mph: Arizona, Colorado, Kansas, Louisiana, Maine, Nebraska, New Mexico, North Dakota, Oklahoma
- 80 mph: Nevada, South Dakota, Utah, Wyoming
- 85 mph: Texas

Thus, vehicles, including those with a GVWR of 11,793.4 kg (26,000 pounds), are now traveling faster than they were in 1991.

Based on the foregoing, the agencies have determined that it was appropriate to reexamine the report to Congress and have come to the conclusion that the concerns and conclusions in that report are no longer valid. However, we have no plans at this time to prepare an updated study, given limited agency resources.

VI. Comparative Regulatory Requirements

In developing this proposal, the agencies examined speed-limiting requirements in other countries, which are summarized below. Several jurisdictions have imposed speed-limiting requirements on certain heavy vehicles and have developed test procedures to ensure that covered vehicles meet these requirements. The Canadian provinces of Quebec and Ontario limited the speed of large trucks to 65 mph in July 2009. In Australia, large trucks have been limited to 62 mph since 1990, with a 56 mph limit for road trains (multiple trailers). The European Union has limited the speed of large trucks and buses under its jurisdiction to 62 mph since 1994. Japan limited large trucks to 56 mph in 2003.

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[39] NTSB/HAR–09/01 PB2009–91620; Motorcoach Run-Off-the-Road and Rollover U.S. Route 163, Mexican Hat, Utah; January 6, 2008.

[40] DOT HS 807 725 (May 1991).

[41] Although the maximum national speed limit was 55 mph, some rural interstates were exceptions to this, with maximum speed limits of 65mph.

[42] The Emergency Highway Energy Conservation Act in 1974 mandated a 55 mph national maximum speed limit on all U.S. highways and tied highway funds to the enforcement of the limit by States. The Surface Transportation Uniform Relocation Assistance Act (1987) gave each state the right to increase speed limits on portions of the Interstate system lying within the least-populated areas of its boundaries. The National Highway System Designation Act of 1995 gave States the ability to set speed limits.

[43] Insurance Institute for Highway Safety, Maximum Posted Speed Limits, *http://www.iihs.org/iihs/topics/laws/speedlimits?topicName=speed,* (last visited June 2016).

A. Canada

Transport Canada does not have a Canadian Motor Vehicle Safety Standard for heavy vehicle speed limiting; however, the provinces of Ontario and Quebec do require that if a CMV is equipped with an electronic control module capable of being programmed to limit vehicle speed, it must be set to no more than 105 km/h (65 mph).[44] This requirement does not apply to buses, mobile cranes, motor homes, vehicles manufactured before 1995, vehicles with a manufacturer's gross vehicle weight rating under 11,793.4 kg (26,000 pounds), ambulances, cardiac arrest emergency vehicles, or fire apparatuses.

Additional requirements for Ontario include the following:

- A speed-limiting device is properly set if it prevents a driver, by means of accelerator application, from accelerating to or maintaining a speed greater than permitted.
- The maximum speed shall be set by means of the electronic control module that limits the feed of fuel to the engine.[45]
- A CMV is exempt if it is equipped with an equally effective device, not dependent on the electronic control module, which allows limitation of vehicle speed, remotely or not, but does not allow the driver to deactivate or modify the set speed.
- All aspects of a CMV's computer device or devices, computer programs, components, equipment and connections that are capable of playing a role in preventing a driver from increasing the speed of a CMV beyond a specified value shall be in good working order.
- A CMV's electronic control module shall contain information that accurately corresponds with any component or feature of the vehicle referred to in the module, including information regarding the tire rolling radius, axle gear ratio and transmission gear ratio.

B. Australia

In Australia, heavy goods vehicles and heavy omnibus maximum road speed are regulated through the Australian Design Rule (ADR) 65/00 "Maximum Road Speed Limiting for Heavy Goods Vehicles." This standard applies to heavy omnibuses with a gross vehicle mass (GVM) of 5 tons or more (UNECE category code M3), as well as heavy goods vehicles over 12 tons (UNECE category code N3). For "Road Train" vehicles, the maximum road speed capability is established by the State or Territory authority. For other heavy goods vehicles and for heavy omnibus vehicles, the maximum road speed capability may be no greater than 100 km/h (62 mph).

The ADR allows for vehicles to be speed-limited by means of gearing or a governor and tested with the following conditions:

- The tires shall be bedded and the pressure shall be as specified by the manufacturer.
- The vehicle shall be at 'Unladen Mass.'
- The track surface shall be free from standing water, snow or ice and shall be free from uneven patches; and the gradient shall not exceed 2 percent and gradients shall not vary by more than 1 percent excluding camber effects.
- The mean wind road speed measured at a height at least 1 meter above the ground shall be less than 6 m/s with gusts not exceeding 10 m/s.
- The instantaneous vehicle road speed shall be recorded throughout the test with a road speed measurement accuracy of at least plus or minus 1 percent at maximum time intervals of 0.1 seconds. The test is then conducted "starting from a road speed 10 km/h less than the 'Set Speed' and the vehicle shall be accelerated as much as possible without changing gear by using a fully positive action on the accelerator control. This action shall be maintained without changing gear for at least 30 seconds after the 'Set Speed' is achieved." The acceptance criteria for this test are twofold.
  - Within the first 10 seconds after reaching the 'Set Speed' the maximum vehicle road speed shall not exceed 105% of 'Set Speed' and the rate of change of vehicle road speed shall not exceed 0.5 m/s^2.
  - More than 10 seconds after reaching the 'Set Speed', the maximum vehicle road speed shall not differ from the 'Set Speed' by more than plus or minus 3.3% of the 'Set Speed' and the rate of change of road speed shall not exceed 0.2 m/s^2.

C. Europe

In 1992, the European Commission (EC) issued directive 92/6/EEC, requiring installation of speed limiting devices on trucks weighing over 12,000 kg (26,400 pounds) and buses with eight or more passenger seats weighing over 10,000 kg (22,000 pounds). The directive required that the speed limiting devices be set in such a way that covered trucks could not exceed 90 km/h (55.9 mph) and that covered buses could not exceed 100 km/h (62.1 mph). These requirements were phased in, initially applying to new vehicles registered after January 1, 1994. A retrofit requirement was subsequently added so that the speed-limiting requirements apply to all covered vehicles registered after January 1, 1988.

That same year, UNECE enacted Regulation 89 (ECE R89), which details uniform provisions concerning the approval of vehicles with regard to their maximum speed and installation of speed limiting devices, as well as approval of speed limiting devices themselves.[46] This regulation specifies general requirements for vehicles with speed limiting devices, as well as performance requirements and test procedures.

The ECE R89 test involves running the vehicle on a test track at a speed 10 km/h (6.2 mph) below the set speed and then accelerating the vehicle as much as possible until at least 30 seconds after the vehicle speed has stabilized. The speed of the vehicle is recorded at intervals of less than 0.1 second. The test is considered satisfactory if the stabilized speed of the vehicle does not exceed the set speed of the vehicle by more than five percent of the set speed or 5 km/h (3.1 mph) (whichever is greater), the maximum speed does not exceed the stabilized speed by more than five percent, and the variance in vehicle speed and rate of change of vehicle speed does not exceed certain thresholds during specified portions of the test.

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[44] *See* Highway Traffic Act, R.S.O, ch. H.8, Section 68.1, available at *http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90h08_e.htm#s68p1s1*, and Equipment, RRO/1990–587, available at *http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_900587_e.htm*. In Quebec and Ontario, enforcement is carried out primarily using standard speed control methods to identify heavy vehicles being driven at more than 105 km/h. Complementing these methods, they use portable electronic testing units connected to a port located inside the truck's cab, highway controllers to access motor data and determine whether the speed limiter has been set at a speed of 105 km/h or less. *http://www.mto.gov.on.ca/english/trucks/trucklimits.shtml*.

[45] See O. Reg. 396/08, s.1

[46] UNECE R89, Uniform provisions concerning the approval of: I. Vehicles with regard to limitation of their maximum speed or their adjustable speed limitation function; II. Vehicles with regard to the installation of a speed limiting device (SLD) or adjustable speed limitation device (ASLD) of an approved type; III. Speed limitation devices (SLD) and adjustable speed limitation device (ASLD)," E/ECE/324–E/ECE/TRANS/505//Rev. 1/Add. 88/Amend. 2 (January 30, 2011).

In 2002, the EC issued directive 2002/85/EC, which extended the coverage of the speed limiting device requirements to include trucks weighing between 3,500 kg (7,716 pounds) and 12,000 kg (26,400 pounds) and buses with eight or more passenger seats weighing less than 10,000 kg (22,000 pounds).

The ECE R89 requirements are as follows:

- The speed limitation must be such that the vehicle in normal use, despite the vibrations to which it may be subjected, complies with certain provisions including the following:
  - The vehicle's speed limiting device (SLD) must be so designed, constructed and assembled as to resist corrosion and ageing phenomena to which it may be exposed and to resist tampering in accordance with the paragraph below.
    - The limitation threshold must not, in any case, be capable of being increased or removed temporarily or permanently on vehicles in use.
    - The speed limitation function and the connections necessary for its operation, except those essential for the running of the vehicle, shall be capable of being protected from any unauthorized adjustments or the interruption of its energy supply by the attachment of sealing devices and/or the need to use special tools.
  - The speed limiting function shall not actuate the vehicle's service braking device. A permanent brake (*e.g.,* retarder) may be incorporated only if it operates after the speed limitation function has restricted the fuel feed to the minimum fuel position.
  - The speed limitation function must be such that it does not affect the vehicle's road speed if a positive action on the accelerator is applied when the vehicle is running at its set speed.
  - The speed limitation function may allow normal acceleration control for the purpose of gear changing.
  - No malfunction or unauthorized interference shall result in an increase in engine power above that demanded by the position of the driver's accelerator.
  - The speed limitation function shall be obtained regardless of the accelerator control used if there is more than one such control which may be reached from the driver's seating position.
  - The speed limitation function shall operate satisfactorily in its electromagnetic environment “without unacceptable electromagnetic disturbance for anything in this environment.”
  - The applicant for approval shall provide documentation describing checking and calibration procedures. “It shall be possible to check the functioning of the speed limitation function whilst the vehicle is stationary.”

Annex 5 of the ECE R89 regulation provides specific vehicle, test track, test equipment, and test methods upon which we have based our proposed test procedure. The ECE regulation also contains specific acceleration, deceleration, and speed.

The test begins with the vehicle running at a speed 10 km/h below the set speed and then accelerated as much as possible using a fully positive action on the accelerator control. This action is then maintained for at least 30 seconds after the vehicle speed has been stabilized. During the test, the vehicle's precise speed and time are collected in order to calculate the maximum speed, stabilized speed, the amount of time required to stabilize the speed, maximum acceleration before the stabilized speed is established, and the maximum acceleration during the stabilized period.

D. Japan

In Japan, speed limitation devices are required to be installed on motor vehicles used to carry goods and have a GVWR of 8 tons or more or a maximum loading capacity of 5 tons or more. These devices are also required on trucks drawing trailers which have a GVWR of 8 tons or more or a maximum loading capacity of 5 tons or more. The general rules for these devices are as follows:

- The speed limitation device shall be so constructed that the vehicle may not be accelerated by the operation of the acceleration devices, such as the accelerator pedal, when the vehicle is running at its set speed.
- The set speed of the speed limitation device shall be any speed not exceeding 90 km/h. Furthermore, the speed limitation device shall be so constructed that the users, etc. of the vehicle cannot alter the set speed nor release the setting.
- The speed limitation device shall be fully capable of “withstanding the running.” Even if wrong operation, etc., of the speed limitation device should occur, it would not incur any increased output that will exceed the engine output determined by the condition of the accelerating devices, such as the depressing amount of the accelerator pedal.[47]
- On motor vehicles equipped with “plural” accelerating devices, the speed limitation device shall actuate for every accelerating device.
- The speed limitation device shall not actuate the service brake device of the vehicle. However, the speed limitation device may actuate the auxiliary brake device only after the fuel supply has been minimized.
- The speed limitation device and connections necessary for its operation (except connections whose disconnection will prevent the normal motor vehicle operation) shall be capable of being protected from any unauthorized adjustments that will hamper the function of the speed limitation device or the interruption of its energy supply, such as power supply, by the attachment of sealing devices and/or the need to use special tools. However, this provision shall not apply to speed limitation devices whose function can be confirmed while the vehicle is stopping.

The conformity of these requirements is tested either by the use of a proving grounds test, a chassis dynamometer test, or by an engine bench test in the following ways:

- Proving grounds test
  - Conditions of the test vehicle
    - The air inflation pressure of the tires shall be the value as posted in the specification table. Moreover, the tires shall be ones that have undergone break-in.
    - The weight of the test vehicle shall be the vehicle weight. However, on motor vehicles equipped with a spare tire and onboard tools, the test may be conducted with such articles mounted on the vehicle.
  - Characteristics of proving ground
    - The surface of the proving ground shall be flat paved road. Gradients shall not exceed 2% and shall not vary by more than 1% excluding camber effects.
    - The surface of the proving ground shall be free from water pool, snow accumulation or ice formation.
  - Ambient weather conditions
    - The mean wind speed shall be less than 6 m/s. Moreover, the maximum wind speed shall not exceed 10 m/s.
- Acceleration test
  - Test Procedure
    - The vehicle running at a speed 10 km/h below the set speed shall be accelerated as much as possible by operating the accelerator device, *e.g.* by

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[47] NHTSA understands this provision to require robustness of the speed limitation device and limitations on the impacts of its failure.

depressing the accelerator pedal fully. This action shall be maintained at least 30 seconds even after the vehicle speed has been stabilized. The vehicle speeds shall be recorded during the test in order to establish the curve of the speed versus the time. In this case, the accuracy of the speed measurement shall be within 1%, whereas the accuracy of the time measurement shall be within 0.1 second.

○ The test shall be carried out for each gear ratio allowing in theory the set speed to be exceeded.

• Requirements

○ In this test, the speed of the test vehicle shall satisfy the following requirements enumerated below.

▪ The stabilized speed shall not exceed the set speed plus 5 km/h nor a speed of 90 km/h.

▪ After the stabilization speed has been reached for the first time, the maximum speed shall not exceed the stabilization speed multiplied by 1.05. Furthermore, the absolute value of the rate of change of speed shall not exceed 0.5 m/s^2 when measured on a period greater than 0.1 second.

▪ Within 10 seconds of first reaching the stabilized speed, the speed limitation function shall be controlled in such a way that the following requirements are satisfied.

▪ The speed shall not vary by more than 4% of the stabilized speed or 2 km/h, whichever is greater.

▪ The absolute value of the rate of change of speed shall not exceed 0.2 m/s^2 when measured over a period greater than 0.1 second.

○ Steady speed test

▪ Test procedure

• The vehicle shall be driven at full acceleration up to the steady speed by operating the acceleration device, *e.g.* by depressing the accelerator pedal fully. Then, the vehicle shall be maintained at this stabilized speed at least 400 meters. The vehicle's average speed shall be measured after the vehicle attained the stabilized speed. Next, the same measurement shall be repeated on the proving ground but in the opposite direction. The mean of the two average speeds measured for both test runs shall be considered the mean stabilized speed. The whole test shall be conducted five times. In this case, the speed measurements shall be performed with an accuracy of 1% whereas the time measurements shall be carried out with an accuracy of 0.1 second.

• The test shall be carried out for each gear ratio allowing in theory the set speed to be exceeded.

• Requirements

○ In this test, the speeds of the test vehicle shall satisfy the following.

○ On each test run, the mean stabilized speed shall not exceed the set speed plus 5 km/h or a speed of 90 km/h.

○ The difference between the maximum value and the minimum value of the mean stabilized speeds obtained during each test run shall be no more than 3 km/h.

• Chassis dynamometer test

○ Conditions of chassis dynamometer

▪ The equivalent inertia weight shall be set with an accuracy of ±10% of the vehicle weight of the test vehicle.

• Acceleration test

○ Test procedure

▪ The vehicle running at a speed 10 km/h below the set speed shall be accelerated as much as possible by operating the accelerating device, *e.g.* by depressing the accelerator pedal fully. This action shall be maintained at least 20 seconds even after the vehicle speed has been stabilized. The vehicle speeds shall be recorded during the test in order to establish the curve of the speed versus the time. In this case, the accuracy of the speed measurement shall be within ± 1%, whereas the accuracy of the time measurement shall be within 0.1 second.

▪ The load of the chassis dynamometer during the test shall be set to the forward running resistance of the test vehicle with an accuracy of 10%. Furthermore, when the competent authority approves it as appropriate, the load may be set to the maximum power of the engine multiplied by 0.4.

▪ The test shall be carried out for each gear ratio allowing in theory the set speed to be exceeded.

• Test procedure

○ The vehicle shall be driven at full acceleration up to the steady speed by operating the accelerating device, *e.g.,* by depressing the accelerator pedal fully. Then, the vehicle shall be maintained at this stabilized speed at least 400 meters. The vehicle's average speed shall be measured after the test vehicle has attained the stabilized speed. This average speed shall be considered the mean stabilized speed. The whole test shall be conducted five times. The speed measurements shall be performed with an accuracy of ± 1 percent, whereas the time measurements shall be carried out with an accuracy of within 0.1 second.

○ The load of the chassis dynamometer shall be changed consecutively from the maximum power of the engine to the maximum power of the engine multiplied by 0.2.

○ The test shall be carried out for each gear ratio allowing in theory the set speed to be exceeded.

• In this test, the requirements prescribed shall be satisfied.

○ Engine bench test

▪ This test method can be carried out only when the competent authority recognizes that this bench test is equivalent to the proving ground measurement.

• Indication

○ With regard to those motor vehicles equipped with a speed limitation device that has complied with the requirement of this Technical Standard, a mark shall be indicated at a place in the vehicle compartment where the driver can easily see the mark and at the rear end of the vehicle (excluding truck tractors).

VII. Proposed Requirements

A. Overview

1. Proposed FMVSS

NHTSA is proposing to establish a new FMVSS that would require new multipurpose passenger vehicles, trucks, buses, and school buses with a gross vehicle weight rating of more than 11,793.4 kilograms (26,000 pounds) to be equipped with a speed-limiting device. Additionally, as manufactured and sold, each vehicle would be required to have its device set to a specified speed. Although NHTSA has not specified a maximum set speed in this proposal, NHTSA intends to specify a maximum set speed in a final rule implementing this proposal. NHTSA has considered the benefits and costs of a 68 mph maximum set speed as requested in the petitions as well as 60 mph and 65 mph maximum set speeds in the overview of benefits and costs discussed in Section X of this document and in the Preliminary Regulatory Impact Analysis, Initial Regulatory Flexibility Analysis, and Draft Environmental Assessment accompanying this proposal.

To determine compliance with the operational requirements for the speed-limiting device (*e.g.,* that the vehicle is in fact limited to the set speed), NHTSA is proposing a vehicle level test that involves accelerating the vehicle and monitoring the vehicle's speed. The proposed test procedure is substantially based on the UNECE R89, described above.

Finally, to assist FMCSA's enforcement officials with post-installation inspections and investigations to ensure compliance with the speed limiting device maintenance requirement, NHTSA is proposing to require that the vehicle set speed and the speed determination parameters be readable through the On-Board Diagnostic (OBD) connection.[48] In addition to the current speed limiting device settings, NHTSA is proposing that the previous two setting modifications (*i.e.,* the two most recent modifications of the set speed of the speed limiting device and the two most recent modifications of the speed determination parameters) be readable and include the time and date of the modifications.

NHTSA solicits comment on all aspects of the proposed FMVSS, including the requirements for a speed-limiting device, the initial set speed requirement, the types of vehicles to which the speed limiting device requirements should be applicable, the proposed recording requirement and potential alternatives, and the proposed test procedure.

2. Proposed FMCSR

FMCSA is proposing an FMCSR requiring each CMV with a GVWR of more than 11,793.4 kilograms (26,000 pounds) to be equipped with a speed-limiting device meeting the requirements of the proposed FMVSS applicable to the vehicle at the time of manufacture, including the requirement that the device be set to a specified speed. As with the FMVSS, FMCSA has not specified the maximum set speed in this proposal, FMCSA intends to specify the maximum set speed in a final rule implementing this proposal. Motor carriers operating such vehicles in interstate commerce would be required to maintain the speed-limiting devices for the service life of the vehicle. FMCSA solicits comment on all aspects of this proposed FMCSR.

B. Applicability

1. Proposed FMVSS

NHTSA is proposing that speed limiting device requirements apply to all new multipurpose passenger vehicles, trucks and buses with a gross vehicle weight rating of more than 11,793.4 kg (26,000 pounds). Although the majority of the estimated safety benefits of this joint rulemaking are for combination trucks because they travel more vehicle miles at high speeds, and thus are involved in more high-speed crashes, this rulemaking would also reduce the number of fatalities from crashes involving other types of heavy vehicles, some of which carry a large number of passengers. Additionally, because other heavy vehicles like single unit trucks and heavy buses have the same heavy-duty engines as combination trucks, the costs associated with installing the required speed-limiting devices in these vehicles would be minimal. For these reasons, the agency has tentatively concluded that it is appropriate to subject all types of heavy vehicles to the speed-limiting device requirements.

Regarding the GVWR threshold, NHTSA decided to focus the speed-limiting device requirements on those vehicles that carry the heaviest loads and for which small increases in speed have larger effects on the force of impact in a crash. These vehicles would also be subject to both FMCSA's regulations applicable to vehicles operated in interstate commerce and states' compatible regulations adopted as a condition of receiving Motor Carrier Safety Assistance Program (MCSAP) grants.

Specifically, NHTSA considered how FMCSA and its state partners could effectively enforce the proposed standard to realize the potential safety benefits. These benefits result from maintaining the speed-limiting devices after they are sold. In general, NHTSA does not have the authority to regulate the use of motor vehicles or motor vehicle equipment by vehicle owners. However, almost all of the vehicles with a GVWR over 11,793.4 kg (26,000 pounds) are CMVs and their maintenance is regulated by FMCSA through the FMCSRs.[49] As discussed throughout this notice, if NHTSA requires speed limiting devices as requested in the petitions, FMCSA will simultaneously amend the FMCSRs to ensure that CMVs with a GVWR over 26,000 pounds that operate in interstate commerce are equipped and maintained with a speed limiting device meeting the requirements of the FMVSS. Accordingly, NHTSA is proposing to limit the applicability of the speed limiting device requirements to vehicles with a GVWR over 11,793.4 kg (26,000 pounds) in order to ensure that these vehicles continue to be speed limited.

NHTSA requests comment on the applicability of the proposed speed limiting device requirements, specifically whether the proposed requirements should apply to vehicles with a GVWR of 11,793.4 kg (26,000 pounds) or lower. We are interested in the costs, if any, to manufacturers of these lighter vehicles, as well as the costs to the operators of these vehicles—and, if applicable, the operators' customers—resulting from the additional travel time.

2. Proposed FMCSR

Consistent with the proposed FMVSS, the proposed FMCSR would also apply to each multipurpose passenger carrying vehicle, truck, bus and school bus (to the extent they fall under FMCSA jurisdiction) with a gross vehicle weight rating of more than 11,793.4 kilograms (26,000 pounds).

FMCSA requests comment on the cost of enforcement of the proposed FMCSR, training, new enforcement tools that may be required, and the costs, if any, to law enforcement partner agencies.

C. Proposed FMVSS Requirements

NHTSA's general approach in developing performance requirements for speed limiting devices was to identify key areas of performance pertinent to the overall effectiveness of speed limiting devices, thus reducing the severity of crashes, as well as to consider opportunities to harmonize the proposal with other global regulations. Considering that almost all vehicles covered by the proposed FMVSS are used for commercial purposes, the proposed requirements also include performance aspects to assist inspectors in the verification of the speed limiting device setting and pertinent speed determination parameter settings.

The proposed requirements are generally consistent with those in the UNECE regulation for vehicles with regard to limitation of their maximum speed. These requirements are located in part I of UNECE R89. While not all the provisions of the UNECE standard are pertinent to NHTSA's proposed regulation, we have evaluated this and other standards and have proposed specific text that best supports the purpose of the proposed FMVSS.

1. Definitions

We are proposing three new definitions with respect to the speed limiting device. The first definition is the set speed (V_{set}). The set speed is the speed limiting device setting, or the intended maximum cruising speed of the vehicle and the speed reported through the OBD connection. The speed would be no greater than a speed to be specified in a final rule implementing this proposal. Additionally we are proposing a definition for the actual maximum average cruising speed of the vehicle, which is referred to as the stabilized speed (V_{stab}). Although we provide a detailed test procedure for obtaining this speed, it is generally the maximum speed that the vehicle can achieve on level ground once the speed control device has stabilized. The V_{stab} speed is required to be equal to the V_{set} speed. We seek comment on the ability of manufacturers to build equipment capable of meeting this requirement. Finally, the maximum speed (V_{max}) is the maximum speed that the vehicle can achieve during the transitional or settling period prior to the vehicle speed being stabilized. This is often referred to as the overshoot in a control device. All three of these vehicle speed definitions have the same general meaning as those used in the UNECE regulation.

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[48] Further information on the specification of the OBD connection is available at *http://www.epa.gov/obd/regtech/heavy.htm.*

[49] Some vehicles covered by the FMVSS would not be covered by the FMCSR. These vehicles include transit buses, motor homes, most school buses, and CMVs in exclusively intrastate service. States may voluntarily require CMVs in exclusively intrastate service through FMCSA's Motor Carrier Safety Assistance Program, as discussed in Section VII.D.1 below.

2. Set Speed

NHTSA is proposing that, as manufactured and sold, each vehicle's speed limiting device would be required to have a set speed of no greater than a speed to be specified in a final rule implementing this proposal. Although the petitions for rulemaking requested that NHTSA permit manufacturers to set the speed limiting device at any speed up to and including 68 mph, the agency has not proposed a specific set speed. In Section X of this document and in the Preliminary Regulatory Impact Analysis, Initial Regulatory Flexibility Analysis, and Draft Environmental Assessment accompanying this proposal, NHTSA has considered the benefits and costs of 60 mph, 65 mph, and 68 mph maximum set speeds.

The agencies estimate that limiting the speed of heavy vehicles to 60 mph would save 162 to 498 lives annually, limiting the speed of heavy vehicles to 65 mph would save 63 to 214 lives annually, and limiting the speed of heavy vehicles to 68 mph would save 27 to 96 lives annually. Although we believe that the 60 mph alternative would result in additional safety benefits, we are not able to quantify the 60 mph alternative with the same confidence as the 65 mph and 68 mph alternatives.

NHTSA also examined maximum posted speed limits for heavy vehicles. The following table shows the distribution of maximum posted speed limits.

TABLE 5

Maximum posted speed limit for certain larger vehicles	Number of States (including the District of Columbia)
55 mph	2
60 mph	3
65 mph	11
70 mph	21
75 mph	9
80 mph	4
85 mph	1

The purpose of this joint rulemaking is to save lives by reducing the severity of crashes involving heavy vehicles. NHTSA and FMCSA are proposing to accomplish this by requiring that those vehicles be equipped with speed limiting devices. The proposed rules are not intended as a mechanism to enforce maximum speed limits set by States. However, the agencies are mindful that the proposed rules would limit the travel speed of heavy vehicles below the maximum posted speed limits in some States. We have therefore considered the distribution of State speed limits as one factor in deciding the appropriate set speed requirement. The above table illustrates that the vast majority of States (41 States) have maximum truck speed limits between 65 mph and 75 mph, with the most common maximum truck speed limits being 70 mph (21 States) and 65 mph (11 States).

We have also examined data from EMA[50] showing the factory speed limiting device settings for trucks[51] manufactured in 2010 and 2011. By far, the single most common speed limiting device setting for the 332,530 vehicles manufactured during this period was 65 mph (24.8%—82,474 vehicles). Trucking fleets generally custom order truck tractors and request speed limiting device settings from the manufacturer based on the costs and benefits of various maximum speeds. The high number of vehicles set to 65 mph suggests that this is a reasonable maximum speed at which to efficiently and safely transport goods, even if it is not the optimum maximum speed for every company.

NHTSA will weigh all of these factors in choosing a maximum set speed for newly manufactured large vehicles and FMCSA will weigh these factors in considering what maximum set speed at which motor carriers would be required to maintain speed limiters. The benefits estimates indicate that substantially more lives would be saved if heavy vehicles are limited to 65 mph versus 68 mph with an additional increase in lives saved if heavy vehicles are limited to 60 mph instead of 65 mph. However, the agencies will also consider State speed limits and the economic impact on manufacturers and fleets including current speed limiter settings and the potential for harmonization with Ontario and Quebec maximum set speed requirements of 105 km/h (65 mph). NHTSA and FMCSA will consider other maximum set speeds both within that range of speeds and outside of it. NHTSA and FMCSA request comment on what an appropriate maximum set speed would be and why that speed should be chosen over other possible maximum set speeds.

We are proposing that the speed limiting device be permitted to allow normal acceleration control for the purpose of gear changing. It is important to provide acceleration control for the purpose of gear changing in order to maintain vehicle drivability. We note that, as proposed, the speed-limiting device must limit the speed of the vehicle regardless of the gear selection. Additionally, we are proposing that the maximum speed (overshoot) not exceed the stabilized speed by more than 5 percent. Likewise, the stabilized speed must not exceed the set speed.

3. Tampering and Modification of the Speed-Limiting Device

Unlike UNECE R89, NHTSA is not proposing any requirement on manufacturers to make the speed limiting device tamper-resistant or to restrict modification of the speed limiting device settings. In other words, although the proposed FMVSS would require that the initial set speed be not greater than a specified speed, a speed limiting device could be capable of adjustment above the specified speed and still meet the requirements of the proposed FMVSS. However, because the proposed FMVSS would be reinforced by the proposed FMCSR, we expect that virtually all of these vehicles would be limited to the specified speed.

As described below, NHTSA is concerned about tampering and modification of the speed limiting device settings after a vehicle is sold. After considering various means of preventing these types of activities as described below in the Regulatory Alternatives section, the agency has tentatively decided not to include this type of requirement because of the costs that such a requirement would impose on manufacturers. NHTSA is also concerned about the feasibility of establishing performance requirements that would be objective and effective in resisting various methods of tampering.[52]

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[50] EMA, Vehicle Speed Limiter Settings—Ex Factory 2010 & 2011 (Nov. 2011).

[51] EMA indicated that the vehicles included in the data consist of mostly heavy-duty trucks and truck tractors with some medium-duty trucks. EMA further indicated that the data included a significant portion of the total heavy-duty production since the start of 2010. *See id.*

In particular, the agency is concerned about speed limiting device setting adjustment and tampering that could allow vehicles to travel faster than the specified maximum set speed. The agency is also concerned about post-sale modification of the speed determination parameters such that they do not match the equipment on the vehicle or the failure to modify the parameters after replacing equipment. Either of these actions could result in the vehicle being capable of traveling at speeds higher than the set speed. Finally, the agency is concerned about potential tampering with the speed limiting device, such as hacking the ECU to disable the speed-limiting device, installing a device that sends a false signal to the speed-limiting device, or replacing the ECU with an ECU that does not limit the speed.

In contrast, NHTSA believes that some modifications should not be restricted, like adjusting the set speed below the maximum specified set speed and changing the speed determination parameter values as necessary to reflect replacement equipment (*e.g.,* equipping the vehicle with different-size tires). These types of modifications do not interfere with, and may even facilitate, vehicles continuing to operate at speeds no greater than the maximum specified set speed after they are sold. Accordingly, NHTSA is proposing to require that speed-limiting devices have some means of adjusting the speed determination parameter values as necessary to reflect replacement equipment.

In order to deter those types of activities that would allow a vehicle to travel above the maximum specified set speed, the proposed FMVSS would be reinforced by the proposed FMCSR, which would require motor carriers to maintain the speed limiting devices in accordance with the requirements of the proposed FMVSS. For example, the FMCSR would prohibit vehicle operators from adjusting the set speed above a maximum specified set speed.

To assist in verifying the performance of the speed limiting device while the vehicle is in use, NHTSA is proposing that the vehicle set speed and the speed determination parameters, such as tire size and gear ratios, be readable through the OBD connection. In addition to the current speed limiting device settings, NHTSA is proposing that the previous two setting modifications (*i.e.,* the previous two modifications of the set speed and the previous two modifications of the speed determination parameters) be readable and include the time and date when they were modified.

NHTSA seeks comment on the proposed speed limiting device setting readability requirements. For example, is reporting the time and date of setting modifications feasible or should some other value be specified (*e.g.,* mileage at the time of modification)? What are other appropriate speed determination parameters, in addition to tire size and gear ratios, that should be readable through the OBD connection? Should the agency specify additional requirements to ensure that the speed limiting device settings are readily accessible through the OBD connection and in an easy-to-understand format in order to facilitate enforcement, and, if so, what should those requirements be?

NHTSA also seeks comment on any alternative approach that would allow inspectors to verify the speed limiting device settings at a reduced cost.

4. Test Procedure and Performance Requirements

NHTSA is proposing a vehicle-level test that involves the acceleration of the vehicle on a test track. The agency is proposing various track and weather conditions, based on the widely utilized UNECE regulation and other vehicle tests that are conducted on test tracks, to ensure the repeatability of testing. The test begins with the vehicle traveling at a steady speed that is below the set speed. The vehicle is accelerated using a full positive action on the accelerator control. Such action is maintained for at least 30 seconds after the vehicle speed has been stabilized. During the testing, the instantaneous vehicle speed is recorded during the testing in order to establish the curve of speed versus time. A more detailed summary of the proposed test procedure follows.

Vehicle conditions. The vehicle would be tested with the tire pressure at the manufacturer's specified pressure in the unloaded weight condition with a single operator.

Test Track conditions. The test surface would be a surface suitable to enable stabilization speed to be maintained and be free from uneven patches, with gradients not exceeding 2% and not varying by more than 1% excluding camber effects. The test track would be a paved surface free from standing water, snow, or ice.

Ambient weather conditions. In order to prevent inconsistency in the test, the test would be performed when the mean wind speed measured was less than 5 m/s and the temperature between 45 °F and 104 °F. NHTSA is proposing a less stringent wind speed condition than the UNECE requirement in order to maintain consistency with other FMVSS track tests.

Test equipment. The speed measurement would be independent of the vehicle speedometer and accurate within plus or minus 1 percent.

Running the test. The vehicle would be run at a speed 10 km/h below the set speed and would be accelerated as much as possible using a full positive action on the accelerator control. This action would be maintained at least 30 seconds after the vehicle speed stabilized. The instantaneous vehicle speed would be recorded during the testing in order to establish the curve of speed versus time.

The speed versus time curve would then be evaluated in order to find the stabilized speed and the maximum speed. Under the proposed requirements, the maximum speed achieved during the test must be no greater than 5 percent of the stabilized speed and the stabilized speed must not exceed the set speed. The agency notes that this proposed requirement is more stringent than the UNECE requirement, which specifies that the stabilized speed must be within 5 percent or 5 km/h of the set speed of the set speed. Adopting the UNECE tolerance would mean that a vehicle could have a stabilized speed of 5 km/h (3 mph) above the specified maximum set speed and still meet the proposed requirements. NHTSA will choose a maximum set sped based primarily on safety considerations with considerations also given to other benefits including fuel savings and the costs of the rule including opportunity costs due to slower deliveries. Whatever maximum speed is ultimately chosen, it will be based on these considerations and allowing vehicles to operate 5 km/h (3 mph) above the maximum set speed will lessen the benefits associated with the chosen maximum set speed. NHTSA seeks comment as to manufacturers' ability to meet this requirement.

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[52] The agency notes that some manufacturers may voluntarily decide to install speed limiting systems with features to restrict modification of the settings and/or make the device tamper-resistant as part of their compliance approach under the fuel efficiency program for medium- and heavy-duty vehicles. Specifically, the fuel efficiency program for medium- and heavy-duty vehicles permits manufacturers to implement a fixed maximum vehicle speed through a speed limiter feature and use the maximum speed as an input for the model used for purposes of certification to the standards of the fuel efficiency program (76 FR 57106, 57155 (Sep. 15, 2011)). Although the speed limiter may be adjustable, compliance is based on the highest adjustable speed setting. Speed settings that are protected by encrypted controls or passwords are not considered when determining the highest adjustable speed, and manufacturers are required to use good engineering judgment to ensure that the speed limiter is tamper resistant.

Additionally, NHTSA is not proposing to include the acceleration limits specified in the UNECE standard of 0.5 m/s^2 within the first ten seconds and 0.2 m/s^2 beyond the first ten seconds (both measured over a time greater than 0.1 s) of the vehicle first reaching the set speed. We question if these acceleration values are achievable during an on-road test. Our calculations indicate that such a requirement limits the change in vehicle speed over any 0.1 second period to no more than 0.045 mph.

$$a = \frac{v_2 - v_1}{t_2 - t_1}$$

$$\frac{0.2m}{s^2} = \frac{\Delta v}{0.1s - 0s}$$

$$\frac{0.02m}{s} = \Delta v$$

$$\frac{0.02m}{s} = \Delta v$$

$$0.045\, mph = \Delta v$$

Given the extreme precision that would be required both of the speed control device and the test equipment, NHTSA proposes not to include the acceleration limits as specified in the UNECE standard. We seek comment as to the necessity of an acceleration limit and, if needed, what a reasonable limit could be.

D. Proposed FMCSR Requirements

FMCSA is proposing an FMCSR requiring each CMV with a GVWR of more than 11,793.4 kilograms (26,000 pounds) to be equipped with a speed limiting device meeting the requirements of the proposed FMVSS applicable to the vehicle at the time of manufacture, including the requirement that the device be set to a speed not greater than a specified maximum speed. This maximum speed will be based on the maximum speed chosen by NHTSA in a final rule implementing this proposal. Motor carriers operating such vehicles in interstate commerce would be required to maintain the speed limiting devices for the service life of the vehicle.

1. Enforcement

FMCSA's roadside enforcement activities are limited by the small size of its staff. The Agency therefore relies on its State partners for enforcement of its safety rules at the roadside. Through the Agency's Motor Carrier Safety Assistance Program (MCSAP), FMCSA provides Federal grants to the States to support the adoption and enforcement of compatible safety regulations. Therefore, FMCSA's adoption of a rule requiring interstate motor carriers to maintain speed limiting devices would be accompanied by the States' adoption of compatible rules applicable to both interstate and intrastate motor carriers pursuant to 49 CFR part 350.

The inclusion of the OBD feature for the speed limiting device would enable FMCSA and its State partners to enforce the proposed rule during roadside inspections, at the discretion of the Agency and its State partners. The enforcement of the requirements could be conducted in a targeted manner, periodically or randomly to provide an effective deterrent to carriers tampering with or disabling the device to avoid the need for the Agency and its State partners to consider changes to the standard inspection procedures or increases in the amount of time needed to complete a roadside inspection. FMCSA is again seeking comment and information regarding the cost of enforcement of the proposed FMCSR, training, new enforcement tools that may be required, and the costs, if any, to law enforcement partner agencies.

In addition, State law enforcement officials responsible for motor carrier safety oversight could cite CMV drivers for violations of the speed limiting device requirements as part of traffic enforcement activities. If the vehicle is observed to be operating in excess of a posted speed limit greater than the maximum specified set speed, and the vehicle was manufactured on or after the effective date of the proposed rule, the speeding violation would then serve as prima facie evidence that the speed limiting device was inoperative, or the setting altered. And, the driver could be subject both to a speeding ticket and motor carrier safety citation for operating a CMV with a speed limiting device that failed to meet the requirements of the State's version of the Federal requirement. Conversely, if the vehicle were clocked at the maximum specified set speed in a 50-mph zone, the driver could be ticketed for speeding, but the officer would make no assumption about the effectiveness of the speed limiting device.

VIII. Regulatory Alternatives

In deciding on the approach proposed in this NPRM, NHTSA and FMCSA have examined the following alternatives to this proposal.

A. Other Technologies Limiting Speed

NHTSA also requests comment on the feasibility of technologies which would limit the speed of the vehicle to the speed limit of the road, as an alternative option to the a requirement limiting vehicle speed to a specified set speed. These technologies might include a GPS, vision system, vehicle to infrastructure communication, or some other autonomous vehicle technology. This could have the effect of reducing fatalities while limiting the economic effects of this rule on roads that have a posted speed above the maximum set speed. Heavy vehicle operators could also potentially choose between vehicles equipped with speed limiting devices set to a specified maximum set speed and vehicles with GPS-based, vision based, or vehicle-to-infrastructure-based, or other autonomous vehicle technology devices depending on their needs.

Our preliminary conclusion is that requiring these technologies to limit vehicle speed would not be feasible and/or cost-effective at this time, but the agencies are seeking comments from the public on this preliminary conclusion. The agencies would not publish a final rule requiring speed limiters using these technologies without first publishing another proposed rule addressing them. The agencies also request comment on whether they should consider allowing GPS-based speed limiters, which adjust to the actual speed limits on roads, to be used as an alternative means of compliance if conventional speed limiters are required.

The agencies understand that some trucking fleets use similar devices for monitoring purposes, but we have several questions about regulating a GPS-based, vision based, or vehicle-to-infrastructure-based device, and we invite comments on the following areas:

- What would be the costs associated with installing and maintaining a GPS-based, vision based, or vehicle-to-infrastructure-based speed limiting device?
- How easy would it be for a driver to interfere with the ability to receive speed limit information without detection and thereby travel faster than the posted speed limit? Are there tamper-resistant technologies available to limit such action?
- What is the best method for determining the posted speed limit on a given section of highway? For GPS-based systems, would the speed map need to be managed federally and made available to the vehicle during operation or could a third-party map be usable

considering the certification requirement?

- How would such a device handle posted speed changes such as dual day/night speed limits and construction zones?
- Is the current GPS coverage sufficient for such a device? How would temporary coverage outages be addressed for enforcement purposes?
- What would be the framework for a compliance test procedure?
- What are the limitations of the technologies in applications such as false positives?
- Should a speed-limiting device that is correlated to the highway speed still have a set speed lower than the posted speed limit?

B. Tampering

As discussed above, at this time NHTSA is proposing to require a speed limiting device that reports the last two modifications of the set speed and the last two modifications of the speed determination parameters, along with the time and date of the modifications. NHTSA is not proposing any requirement on manufacturers to make the speed limiting device tamper resistant or to restrict modification of the speed limiting device settings. In other words, although the proposed FMVSS would require that the initial set speed be not greater than a maximum specified speed, a speed limiting device could be capable of adjustment above the maximum specified speed and still be compliant with the proposed FMVSS.

Although NHTSA is concerned about tampering and modification of the speed limiting device settings after a vehicle is sold, after considering various means of preventing these type of activities the agency has tentatively decided not to include a requirement to prevent tampering because of the costs that such requirements would impose on manufacturers and because we are concerned about the feasibility of establishing performance requirements that would be objective and effective in resisting various methods of tampering.

In general, there are several design approaches for restricting modification of the speed limiting device settings and/or making the ECU tamper resistant, namely through passwords (Pass Code) and coding of the device using hardware (Hard Code). The Pass Code design approach has two options. The first Pass Code option is to set the speed limiting device setting at the OEM factory. With the first Pass Code option, subsequent owners would be able to legitimately change the setting if vehicle components that would directly affect the speed limiting device performance are altered and recalibration is necessary. However, speed limiting devices with the first Pass Code option would not be tamper resistant. The second option is to set speed limiting device setting at the OEM factory and make it "factory password protected." With the second Pass Code option, vehicle owners would have to make a formal request to either the vehicle or engine manufacturers to change the setting. According to EMA, if a vehicle owner needed to make any subsequent changes, it would cost approximately $300 per vehicle with the second Pass Code option. The Hard Code design approach is to hardcode the speed limiting device set speed in the ECU, based on characteristics of each vehicle produced. The Hard Code option would eliminate all possibilities of subsequent changes unless the entire ECU is replaced. With this approach, subsequent ECU changes would cost owners $2,000 or more.[53]

In addition to the costs to manufacturers and vehicle owners that would result, such requirements would place an unrealistic burden on manufacturers to certify that equipment will resist methods of tampering that may be unknown at the time of certification. Although a basic password requirement may seem straightforward, establishing specific objective performance requirements for a password device that resists hacking would be challenging, and such requirements may not ultimately achieve the desired outcome of preventing tampering. Additionally, hacking methods that are unknown to the agency or to manufacturers could compromise such a tamper-resistant device. In the future, it may be possible to fool even a speed-limiting device that is hard coded into the ECU by providing false input signal.

NHTSA is also concerned that such devices could interfere with the types of modifications that NHTSA believes should not be restricted, like adjusting the set speed within the range of speeds up to the maximum specified set speed and changing the speed determination parameter values as necessary to reflect replacement equipment (*e.g.*, equipping the vehicle with different-size tires). These types of modifications do not interfere with, and may even facilitate, vehicles continuing to operate at speeds no greater than the maximum specified set speed after they are sold.

Given these concerns and the additional costs to vehicle manufacturers from installing devices that restrict modification of the speed limiting device settings and/or are tamper-resistant, NHTSA is not proposing to include these requirements. However, we invite comment on these various means of restricting modification of the speed limiting device, including their effectiveness and cost, as well as whether objective performance requirements can be established.

FMCSA proposes to enforce NHTSA's speed limiting device requirements for vehicles manufactured after the effective date of the FMVSS. Specifically, drivers and carriers would be subject to Federal civil penalties if they are determined to have operated CMVs with a GVWR of more than 26,000 pounds in interstate commerce when the speed limiting device is (1) not functioning, or (2) set at a maximum speed in excess of the maximum specified set speed. They would be subject to Federal civil penalties of up to $2,750 for drivers and up to $11,000 for employers who allow or require drivers to operate CMVs with speed limiting devices set at speeds greater than the maximum specified set speed.

If a speed limiting device is not functioning, drivers and carriers could avoid violations by driving no faster than the maximum specified set speed until the vehicle is repaired. Under 49 CFR part 396, drivers are required to prepare driver vehicle inspection reports (DVIRs) which document all defects or deficiencies observed by or reported to the driver during the work day. At any time the driver observes that the vehicle can exceed the maximum specified set speed, he or she should document the problem on the DVIR, which triggers a duty on the part of the motor carrier, upon receipt of the report, to correct the problem.

We are interested in receiving comments on ways to read the set speed and speed determination parameters other than through the OBD connection. Comments should consider ways to reduce the equipment cost required for enforcement officials based on roadside and facility-based enforcement programs.

C. Test Procedures

NHTSA is proposing a test procedure that is similar to that in the UNECE R89 regulation, which is widely used in many parts of the world, as opposed to an independent test track procedure. We believe this approach limits the cost of certification to manufacturers and increases their ability to use common engineering designs already included in the ECUs installed on vehicles around the world.

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[53] Truck Manufacturers Association (EMA), "Informational Meeting with NHTSA Speed Limiter Tamperproofing", July 9, 2007, NHTSA–2007–26851–3841.

The European standard includes the additional testing methods of vehicle dynamometer and engine dynamometer. These test methods may provide additional flexibility for manufacturers that are unable to use a test track, or during unfair weather conditions. We seek comment on whether NHTSA should consider these test methods as an option to our proposed track test.

D. Electromagnetic Interference

Unlike the UNECE regulation, NHTSA has chosen not to include an electromagnetic disturbance requirement in the proposed FMVSS. The agency is concerned that speed limiting devices, as well as all safety critical electronic equipment, operate within the installed environment with respect to electromagnetic interference (EMI). However, if the agency finds a safety need to pursue EMI requirements, it will likely be conducted in a broad way that covers various electronic devices. At this time, the agency does not intend to apply EMI requirements on an ad hoc basis to specific regulations. The agency seeks comment on whether the EMI requirements of the UNECE regulation should be included in the FMVSS.

IX. Other Issues

A. Retrofitting

Road Safe America requested in its petition that all trucks manufactured after 1990 be required to be equipped with electronic speed governors. NHTSA is again seeking comment and information regarding the possibility of requiring all multipurpose passenger vehicles, trucks and buses manufactured after 1990 with a gross vehicle weight rating of more than 11,793.4 kg (26,000 pounds) to be retrofitted with electronic speed limiters.

The Secretary of Transportation has authority to promulgate safety standards for "commercial motor vehicles and equipment subsequent to initial manufacture." [54] The Office of the Secretary has delegated authority to NHTSA to: "promulgate safety standards for commercial motor vehicles and equipment subsequent to initial manufacture when the standards are based upon and similar to a [FMVSS] promulgated, either simultaneously or previously, under chapter 301 of title 49, U.S.C." [55] Additionally, FMCSA is authorized to enforce the safety standards applicable to CMVs operating in interstate commerce.[56] We request information on several issues relating to retrofitting used vehicles.

We seek to know more about the technical and economic feasibility of a retrofit requirement. In its comment to our 2007 Request for Comments, EMA expressed concern about retrofitting all post-1990 trucks. EMA's first concern related to retrofitting vehicles manufactured from 1990 to approximately 1994 to 1996, which were frequently equipped with mechanically controlled engines with mechanical speed limiting devices. EMA indicated that it would be impractical to retrofit these vehicles with modern ECUs and they estimated that it would cost $1,000 to $1,500 per vehicle to retrofit those vehicles currently without ECUs with a mechanical speed limiting device. EMA's second concern related to retrofitting ECU-equipped vehicles (*i.e.* post 1994 to1996 vehicles) with tamper-proof speed limiting devices. EMA described three approaches to retrofitting these vehicles with varying degrees of tamper protection. The estimated costs of these retrofit approaches ranged from $100 to $2,000 per vehicle, and EMA estimated that one million vehicles would have to be retrofitted. Additionally, two of the three approaches would require redesigning the software and/or hardware of each engine model and would entail additional costs ranging from $2,500,000 to $10,000,000 per engine model. EMA estimated there are 40 engine control devices from 1990 to the present that would have to be modified.

Hino Motors submitted a comment stating that it does not support the retrofitting of trucks that were manufactured with mechanically controlled engine devices, noting that it manufactured trucks with mechanically controlled engine devices through the model year 2003. The company stated that retrofitting older mechanically controlled engine devices with electronic controls would be costly to vehicle owners.

AAA requested that the agency explore the idea of retrofitting trucks currently on the road.

Based on the comments received, NHTSA is concerned that requiring the retrofitting of CMVs with speed limiting devices could be costly. Further, we understand that requiring retrofitted vehicles to meet every aspect of the performance requirements set forth in this proposal would impose additional costs beyond the costs associated with setting the speed limit. However, a number of these requirements are designed to assist enforcement personnel in the verification of the speed limiting device setting and pertinent vehicle parameter settings, and both NHTSA and FMCSA are concerned about the practicability of roadside enforcement if these were not included in any retrofit requirements. Given the agencies' concerns about technical feasibility, cost, enforcement, and impacts on small businesses, we are seeking public comment to improve our understanding of the real-world impact of implementing a speed limiting device retrofit requirement on existing vehicles and whether it is appropriate to have different requirements for these vehicles.

Retrofit Requirements

Please explain why the agency should (or should not) consider requiring a speed limiting device requirement for existing heavy vehicles. Please discuss:

a. What portions of the existing heavy vehicle fleet are not equipped with speed limiting devices, are equipped with mechanical speed limiting devices, or are equipped with ECUs? The agencies are also seeking this type of information for the fleets owned by small businesses.

b. How old are vehicles in each of these categories and what are their expected lifetimes? The agencies are also seeking this type of information for the fleets owned by small businesses.

c. In what model year did manufacturers cease manufacturing vehicles equipped with mechanically controlled engines?

d. Is it technically feasible to retrofit a vehicle equipped with a mechanically controlled engine with an ECU and if feasible what would be the cost to do so?

e. What technically feasible approaches, if any, are there to retrofit mechanical speed limiting devices so that they have some level of tamper resistance, and what are the costs of such approaches?

f. What technologies are available to increase the tamper resistance of speed limiting devices in ECUs and what would be the cost to retrofit existing vehicles with these technologies?

As an alternative to a retrofit requirement, the agencies request comment on whether to extend the set speed requirement to all CMVs with a GVWR of more than 26,000 pounds that are already equipped with a speed limiting device and how such a requirement would impact our cost benefit analysis. As explained throughout this document, all vehicles with electronic engine control units (ECUs) are generally electronically speed governed to prevent engine or other damage to the vehicle, and ECUs have been installed in most heavy trucks since 1999. Additionally, a number of older vehicles are equipped with mechanical speed limiting devices. Accordingly, in order to realize the benefits associated with limiting heavy vehicles' speed in a shorter timeframe without imposing any additional equipment costs, the agencies request comment on whether to require that the speed limiting devices in these older CMVs be set to a speed not greater than a maximum specified set speed.

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[54] Motor Carrier Safety Improvement Act of 1999, Pub. L. 106–159, 101(f), 113 Stat. 1748 (Dec. 9, 1999).

[55] 49 CFR 1.95(c).

[56] 49 U.S.C. 31136(a).

B. Lead Time

If the proposed FMVSS is established, NHTSA is proposing a compliance date of the first September 1 three years after publication of a final rule. For illustration purposes, the proposed regulatory text uses the date of September 1, 2020. We believe that this lead time is appropriate as some design, testing, and development will be necessary to certify compliance to the new requirements. Three years is also consistent with the MCSAP time period for States to adopt regulations consistent with FMCSA standards.

X. Overview of Benefits and Costs

Based on our review of the available data, if heavy vehicles were limited, it would reduce the severity of crashes involving these vehicles and reduce the resulting fatalities and injuries. The proposed rules would require that each vehicle, as manufactured and sold, have its speed limiting device set to a speed not greater than a maximum specified set speed, and that motor carriers maintain the set speed at a speed not greater than the maximum specified set speed. We expect that, as a result of this joint rulemaking, virtually all of these vehicles would be limited to that speed. In order to explore the benefits and costs of requiring speed limiters to be set at a variety of speeds, we have estimated the benefits and costs assuming that the affected vehicles are limited to speeds no greater than 60 mph, 65 mph, and 68 mph.

A. Benefits

1. Safety Benefits

As explained above, most studies examining the relationship between travel speed and crash severity have concluded that the severity of a crash increases with increased travel speed.[57] The relationship between travel speed and avoiding crashes is less certain, as described in detail in NHTSA's 1991 Report to Congress[58] and as indicated by the differing opinions of commenters who responded to the 2007 Request for Comments. The FMCSA study cited above showed a reduced crash risk with speed limiting devices. However, the lack of adequate exposure data, in terms of miles driven, makes it difficult to estimate the safety benefits of crashes avoided.

Commenters who opposed the ATA and Road Safe petitions contend that the creation of speed differentials between cars and heavy vehicles would increase crash risk. There have been a number of studies conducted on the impact of speed differentials between cars and heavy vehicles and whether differential speeds increase vehicle interactions and crash risk. Two studies, one conducted by the Virginia Transportation Research Council (VTRC) and disseminated under sponsorship of the U.S. Department of Transportation, and the other conducted by the University of Idaho, observed no consistent safety effects of differential speed limits compared to uniform speed limits.[59] Other studies have found an increased crash risk when vehicles deviate from the mean speed, though those studies' conclusions differed as to the magnitude of the deviation from the mean speed that was associated with an increased crash risk. A full discussion of these studies can be found in the PRIA.

After considering this research and the difficulty in estimating the effect of speed limiting devices on crash risk, the agencies have chosen not to include an estimate of crashes avoided in the PRIA and to only estimate the benefits of reducing crash severity. Although this approach is conservative and the agencies believe that speed limiting devices will likely reduce both the severity and risk of crashes, the agencies have greater confidence that the estimated benefits described below will be fully realized because, by focusing on crash severity, the agencies are able to isolate more effectively the effects of speed reduction on safety. We invite public comment on these determinations and any additional information or studies related to the impact of speed limiting devices on crash avoidance that we should consider in estimating the effect of this rulemaking.

Using Fatality Analysis Reporting System (FARS) and National Automotive Sampling System General Estimates System (NASS GES) crash data over the 10-year period between 2004 and 2013, the agencies examined crashes involving heavy vehicles (*i.e.*, vehicles with a GVWR of over 11,793.4 kg (26,000 pounds)) on roads with posted speed limits of 55 mph or above. The agency focused on crashes in which the speed of the heavy vehicle likely contributed to the severity of the crash (*e.g.*, single vehicle crashes, crashes in which the heavy vehicle was the striking vehicle. The agencies estimated that these crashes resulted in 10,440 fatalities[60] from 2004 to 2013 (approximately 1,044 annually).

Among the 10,440 fatalities, 9,747 resulted from crashes involving combination trucks, 442 resulted from crashes involving single unit trucks and the remaining 251 resulted from crashes involving buses.

In order to estimate the safety benefits,[61] we calculated the risk that a heavy vehicle will be involved in a crash that results in a fatality versus a crash that results in an injury or property damage on roads with posted speed limits of 55 mph and higher, which we refer to as the "vehicle-based model."[62] Similarly, we calculated the risk that a person would suffer fatal injury in a crash involving a heavy vehicle versus a crash that would involve nonfatal injury or property damage only on roads with posted speed limits of 55 mph or higher, which we refer to as the "person-based model." We then used the probability of fatal crash (or odds ratio) to derive the percent reduction in the fatal crash rate that would result from reducing the travel speed of heavy vehicles traveling at speeds above a set speed to the set speed (*i.e.*, how would the probability of a heavy vehicle crash being fatal change if the vehicles were limited to a set speed?). Using this method, we estimate that limiting heavy vehicles to 68 mph would save 27 to 96 lives annually, limiting heavy vehicles to 65 mph would save 63 to 214 lives annually, and limiting heavy vehicles to 60 mph would save 162 to 498 lives annually.[63] Although we believe that the 60 mph alternative would result in additional safety benefits, we are not able to quantify the 60 mph alternative with the same confidence as the 65 mph and 68 mph alternatives.

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[57] Johnson, Steven L. & Pawar, Naveen, Mack-Blackwell Rural Transportation Center, Cost-Benefit Evaluation of Large Truck-Automobile Speed Limits Differentials on Rural Interstate Highways, MBTC 2048 (Nov. 2005).

[58] NHTSA, Commercial Motor Vehicle Speed Control Safety, DOT HS 807 725 (May 1991).

[59] VTRC, The Safety Impacts of Differential Speed Limits on Rural Interstate Highways, FHWA–HRT–04–156, September 2004; Idaho Transportation Department Planning Division. Evaluation of the Impacts of Reducing Truck Speeds on Interstate Highways in Idaho, -Phase III, Final Report Dec., 2000, National Institute for Advanced Transportation Technology University of Idaho.

[60] The fatality numbers were also adjusted to reflect the effect of new heavy vehicle requirements that have been adopted by NHTSA within the last several years (*e.g.*, the final rule adopting seat belt requirements for passenger seats in buses (78 FR 70415 (Nov. 25, 2013), the final rule to adopt electronic stability control requirements for heavy vehicles (80 FR 36049 (June 23, 2015)).

[61] For a full discussion of the agency's safety benefits methodology, please consult the PRIA.

[62] The fatal crash rate represents the ratio of the number of vehicles involved in fatal crashes to the total number of vehicles involved in all police-reported crashes. This value is calculated using the crash data from the FARS & GES databases. For example, if there are 100 vehicles involved in police-reported crashes, and 10 of those vehicles are involved in fatal crashes, the fatal crash rate is 1/10 or 0.1.

We have estimated the number of injuries that would be prevented using the ratio of fatalities to injuries resulting from certain crashes involving combination trucks.[64] This method uses the number of lives saved to estimate the corresponding number of injuries prevented.

Based on range of fatalities prevented, this rulemaking would prevent 179 to 551 serious injuries[65] and 3,356 to 10,306 minor injuries with a maximum set speed of 60 mph, 70 to 236 serious injuries and 1,299 to 4,535 minor injuries with a maximum set speed of 65 mph, and 30 to 106 serious injuries and 560 to 1,987 minor injuries with a maximum set speed of 68 mph.

Fatality and injury benefits are monetized in two parts. The first part is based on the value of a statistical life (VSL). Value-of-life measurements inherently include a value for lost quality of life plus a valuation of lost material consumption that is represented by measuring consumers' after-tax lost productivity. Additionally, there are costs to society incurred as a result of an injury or fatality that are separate from the value of the life saved/injury prevented. Benefits occur from reducing these economic costs of crashes by reducing the number of people injured or killed. These items include: reducing costs for medical care, emergency services, insurance administrative costs, workplace costs, and legal costs. These monetized benefits are reflected in Table 7 below. In addition to the safety benefits, this rule would result in reduced property damage as a result of making crashes less severe.

TABLE 6—ANNUAL FATALITIES PREVENTED SPEED LIMITING DEVICES FOR COMBINATION TRUCKS, SINGLE UNIT TRUCKS AND BUSES

Type	60 mph		65 mph		68 mph	
	Low	High	Low	High	Low	High
Combination trucks	159	472	62	204	27	92
Single-unit trucks	3	14	1	5	0	2
Buses	0	12	0	5	0	2
Total lives saved	162	498	63	214	27	96

* The numbers were rounded to the nearest integer.

TABLE 7—BENEFITS FROM REDUCED FATALITIES, INJURIES, AND PROPERTY DAMAGE SAVINGS, 7% DISCOUNT

[In millions of 2013 dollars]

Benefits	60 mph		65 mph		68 mph	
	Low estimate	High estimate	Low estimate	High estimate	Low estimate	High estimate
Combination Trucks	$1,819	$5,382	$706	$2,322	$304	$1,048
Single-unit trucks	30	155	10	53	4	21
Buses	0	139	0	58	0	24
Total	1,849	5,676	716	2,433	308	1,093

2. Fuel Saving Benefits

In addition to the safety benefits, the proposed rules would result in a reduction in fuel consumption due to increased fuel efficiency. To determine the fuel savings, the agencies used NASS GES and FARS data to estimate VMT on different types of roads (*e.g.*, 55 mph roads, 60 mph roads, etc.) and State data to estimate the actual travel speeds of heavy vehicles on those roads. The agencies separately calculated fuel savings based on current regulatory requirements and the proposed phase 2 medium- and heavy-duty fuel efficiency rules.[66] The agencies only estimated fuel savings for 65 mph and 68 mph speed limiters. The fuel savings for 60 mph speed limiters are assumed to be equal to the fuel savings from 65 mph speed limiters. The medium- and heavy-duty fuel efficiency program accounts for speed limiters set to speeds less than 65 mph in assessing compliance with the fuel economy standards.[67]

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[63] The number of lives saved for each category of crashes is rounded to the nearest integer, while the total lives saved is calculated using the unrounded estimates of lives saved for each category of crashes. This creates a slight discrepancy between the total lives saved and the sum of the rounded estimates of lives saved for each crash category.

[64] Specifically, the agencies relied on data from crashes involving combination trucks striking other vehicles from behind to determine the fatality-to-injury ratio. The agencies used this data because the agencies believe that these are the types of crashes (and injuries) that are most likely to be affected by the proposed speed-limiting requirements. As discussed throughout the notice, combination truck crashes make up the vast majority of the target population, and the agency believes that those crashes in which a heavy vehicle hits another vehicle from behind are the most common type that would be affected by this rulemaking.

[65] The fatality-to-injury ratios for AIS 3, AIS 4, and AIS 5 injuries coincidentally add up to 1. Accordingly, the number of serious injuries prevented (AIS 3–5) is estimated to be equivalent to the number of fatalities. Please consult the PRIA for additional discussion on how the agencies estimated the injuries prevented.

[66] See 80 FR 40,137 (July 13, 2015).

[67] The agency has considered the effect of the medium- and heavy-vehicle fuel efficiency program on the fuel savings estimates for this proposal to ensure that the agency does not include fuel savings already accounted for in the heavy vehicle fuel efficiency final rule if manufacturers use speed limiting systems that satisfy the requirements of both rules. This issue is fully addressed below in

The agencies predictions for fuel savings and total benefits, including greenhouse gas (GHG) emissions reduction.[68]

TABLE 8—SUMMARY OF FUEL SAVINGS SPEED LIMITING DEVICES

[In millions]*

	Vehicle type	Fuel saved, 65 mph (in millions of gallons)	Monetized fuel savings, 65 mph (in millions of 2013 dollars)	Fuel saved, 68 mph (in millions of gallons)	Monetized fuel savings, 68 mph (in millions of 2013 dollars)
Estimate Based on Current Regulatory Requirements	Combination Trucks	377	$1,220	169	$545
	Single Unit Trucks	36	113	15	48
	Buses	9	30	4	12
Total		423	1,363	188	605
Estimate Based on Proposed Phase 2 Medium- and Heavy-Duty Fuel Efficiency Program Requirements.	Combination Trucks	304	$984	136	$440
	Single Unit Trucks	32	98	13	41
	Buses	8	26	3	11
Total		344	1,108	153	492

*The numbers were rounded to the nearest integer.

TABLE 9—ANNUAL TOTAL BENEFITS, 7% DISCOUNT

[In millions of 2013 dollars]*

Benefits	60 mph		65 mph		68 mph	
	High estimate	Low estimate	Low estimate	High estimate	Low estimate	High estimate
Combination Trucks	$2,571	$6,134	$1,458	$3,074	$640	$1,384
Single-unit trucks	105	230	85	128	36	53
Buses	20	159	21	79	8	32
Total	2,695	6,522	1,564	3,281	684	1,469

*Numbers were rounded to the nearest integer.

B. Costs

1. Heavy Vehicle Manufacturers

For manufacturers, NHTSA expects the costs associated with the proposed FMVSS to be insignificant for new heavy vehicles because these vehicles already use ECUs for engine control. Regarding compliance test costs, truck manufacturers can use any appropriate method to certify to the performance requirements, including engineering analysis/calculation, computer simulation, and track testing. The agency believes that manufacturers will not need any tests additional to those they and their suppliers are currently conducting to verify the performance specifications.

2. Societal Costs Associated With the Operation of Heavy Vehicles

This joint rulemaking would impose societal costs since the proposed speed setting will decrease the travel speed for trucks currently traveling faster than the maximum specified set speed (the same work will be done, but it will take longer to do it). This will result in increased travel time and potentially longer delivery times and a loss of a national resource. We have also accounted for a loss of value of goods as a result of increased travel time. In order to compensate for the increased travel time, trucking and bus companies would need to require current operators drive longer hours (within hours of service limits), hire additional operators, and use team driving strategies in some cases. We estimate the cost of this added time to be $1,534 million annually for 60 mph speed limiters, $514 million annually for 65 mph speed limiters, and $206 million annually for 68 mph speed limiters assuming a 7 percent discount rate. However, the estimated fuel savings offset these costs. In other words, even without considering the safety benefits, this joint rulemaking would be cost beneficial.[69]

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the agencies' discussion of the Unfunded Mandates Reform Act. The agency has also adjusted the baseline fuel economy to account for the improvements to fuel economy as a result of the medium- and heavy-vehicle fuel efficiency program. The agency has also considered the effects of improvement in fuel economy as a result of the medium- and heavy-duty fuel efficiency program and has taken account of them in fuel savings estimates. These issues are discussed in detail in the PRIA.

[68] To determine the benefits of reduced GHG emissions, the agencies estimated the benefits associated with four different values of a one metric ton carbon dioxide reduction (model average at 2.5% discount rate, 3%, and 5%; 95th percentile at 3%). These values were developed by an interagency working group to allow agencies to incorporate the social benefits of reducing carbon dioxide emissions into their cost-benefit analyses. *See,* Interagency Working Group on Social Cost of Carbon, United States Government, Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866 (rev. Nov. 2013), available at, *http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/technical-update-social-cost-of-carbon-for-regulator-impact-analysis.pdf.* The agencies have used the 3 percent discount rate value, which the interagency group deemed as the central value, in the primary cost-benefit analysis. For internal consistency, the annual benefits are discounted back to net present value using the same discount rate as the social cost of carbon estimate (3 percent) rather than 3 percent and 7 percent. A complete list of values for the four estimates (model average at 2.5% discount rate, 3%, and 5%; 95th percentile at 3%) is included in the PRIA.

[69] Additionally, although the purpose of this rulemaking is to reduce the severity of heavy

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3. Impacts on Small Trucking and Motorcoach Businesses

Although the proposed rules would apply to all heavy vehicles, the agencies' analysis indicates that this joint rulemaking could put owner-operators and small fleet owners, particularly those not using team driving strategies, at a disadvantage in some circumstances. Currently, there are transport jobs that small trucking companies could bid on and arrive one day sooner compared to a firm that already voluntarily uses a speed limiting device, if the small trucking company drives at 75 mph, which is the speed limit on some roads. Thus, it is likely that there are some jobs where there is an apparent competitive advantage to being able to drive faster. Some small businesses currently traveling at higher speeds might not be able to expand quickly enough to make the extra trips necessary to compensate for the increased travel times resulting from limiting their speed. Instead of these small independent trucking companies buying new trucks and/or hiring additional drivers, we expect that large trucking companies would absorb the additional cargo with their reserve capacity of trucks and drivers.

Although the agencies do not expect additional costs to the trucking industry as a whole in the near future from this rulemaking, small trucking companies, especially independent owner-operators, would be less profitable with speed limiting devices set. We have very limited data to predict how the affected owner-operators would deal with the increase in delivery times. We expect that some of the affected owner-operators would work for trucking companies as independent contractors. If all of the affected owner-operators worked for trucking companies as independent contractors, they would lose $54 million in labor income. Our data is even more limited for entities that operate buses, but we expect that some small motorcoach companies may have to hire additional drivers to compensate for the increased travel times resulting from speed limiting devices.

We request comment on the agencies' assumptions regarding how this rulemaking would affect small heavy vehicle operators, and we request comment on the type and magnitude of that effect.

Although this rulemaking is expected to result in large fuel savings to the trucking industry as a whole, the agencies have limited data on the travel speeds of and vehicle miles traveled (VMT) by trucks operated by small companies as compared to trucks operated by large companies. Accordingly, it is difficult to estimate the relative fuel savings for small companies. However, we have anecdotal evidence suggesting that the VMT by trucks operated by small companies is 30 percent of the total VMT by all commercial vehicles. Assuming that there is no difference in travel speed between trucks operated by small companies and trucks operated by large companies, 30 percent of the fuel savings resulting from the proposed rule would be realized by small trucking companies. In order to improve our estimate, which, as mentioned above, is based on limited data and certain assumptions, the agencies request comments on VMT and vehicle travel speed for different sizes of truck carriers and bus companies.

C. Net Impact

These proposed rules are cost beneficial. Combining the value of the ELS, the property savings, and the fuel savings, the total benefits are greater than the estimated cost, even assuming that the proposed rule would result in the low benefits estimate.

TABLE 11—OVERALL NET BENEFITS TO HEAVY VEHICLE INDUSTRIES ASSOCIATED WITH SPEED LIMITERS, 7% DISCOUNT

[In millions, 2013 dollars]*

Vehicle	60 mph		65 mph		68 mph	
	Mininum	Maximum	Mininum	Maximum	Mininum	Maximum
Total Benefits	$2,695	6,522	1,564	3,281	684	1,469
Total Costs	1,561	1,561	523	523	209	209
Net Benefit	1,136	4,964	1,039	2,757	475	1,260

*The estimates may not add up precisely due to rounding

For further explanation of the estimated benefits and costs, see the PRIA provided in the docket for this proposal.

XI. Public Participation

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Comments may be submitted to the docket electronically by logging onto the Docket Management System Web site at *http://www.regulations.gov*. Follow the online instructions for submitting comments.

You may also submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *http://www.whitehouse.gov/*

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vehicle crashes and not to enforce posted speed limits, limiting heavy vehicle speed would likely drastically reduce the amount of speeding citations received by heavy vehicle operators on roads with posted speed limits of 65 mph and greater. These citations involve a number of economic effects on operators, including the fine assessed against the operator and the reduction in productivity from being pulled over to the side of the road. Additionally, commercial vehicle operators face additional potential costs because they can be disqualified from operating a commercial motor vehicle after two or more excessive speeding citations (49 CFR 383.51), which could result in a loss of income during the suspension period. Accordingly, the reduced number of traffic citations would offset some of the costs to operators from speed limiting heavy vehicles.

omb/fedreg/reproducible.html. DOT's guidelines may be accessed at *http://www.rita.dot.gov/bts/sites/rita.dot.gov.bts/files/subject_areas/statistical_policy_and_research/data_quality_guidelines/index.html.*

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will NHTSA and FMCSA consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location. You may also see the comments on the Internet. To read the comments on the Internet, go to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

XII. Rulemaking Analyses

A. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

Executive Order 12866, Executive Order 13563, and the Department of Transportation's regulatory policies require the agencies to make determinations as to whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the aforementioned Executive Orders. Executive Order 12866 defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the potential impact of this proposal under Executive Order 12866, Executive Order 13563, and the Department of Transportation's regulatory policies and procedures. This joint rulemaking is economically significant because it is likely to have an annual effect on the economy of $100 million or more. Thus it was reviewed by the Office of Management and Budget under E.O. 12866 and E.O. 13563. The rulemaking action has also been determined to be significant under the Department's regulatory policies and procedures. The Preliminary Regulatory Impact Analysis (PRIA) fully discusses the estimated costs and benefits of this joint rulemaking action. The costs and benefits are also summarized in Section X of this preamble.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1164 (5 U.S.C. 601 *et seq.*, as amended), whenever an agency is required to publish an NPRM or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the proposal will not have a significant economic impact on a substantial number of small entities. The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a proposal will not have a significant economic impact on a substantial number of small entities.

The agencies believe that the proposed rules will affect small businesses, and may have a significant economic impact on a substantial number of small businesses. Accordingly, we have included an initial regulatory flexibility analysis in the PRIA detailing these effects and summarized these effects in Section X.B. of this preamble. We summarize the initial regulatory flexibility analysis below.

Agencies are required to prepare and make available for public comment an initial regulatory flexibility analysis (IRFA) describing the impact of proposed rules on small entities if the agency determines that the rule may have a significant economic impact on a substantial number of small entities. Each IRFA must contain:

(1) A description of the reasons why action by the agency is being considered;

(2) A succinct statement of the objectives of, and legal basis for, the proposed rule;

(3) A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

(4) A description of the projected reporting, record keeping and other compliance requirements of a proposed rule including an estimate of the classes of small entities which will be subject to the requirement and the type of

professional skills necessary for preparation of the report or record;

(5) An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule;

(6) Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

Description of the Reasons Why Action by the Agency Is Being Considered

As described in greater deal above, studies examining the relationship between travel speed and crash severity have confirmed the common-sense conclusion that the severity of a crash increases with increased travel speed.[70] In 2006, NHTSA received a petition from the American Trucking Associations (ATA) to initiate a rulemaking to amend the Federal Motor Vehicle Safety Standards (FMVSS) to require vehicle manufacturers to limit the speed of trucks with a Gross Vehicle Weight Rating (GVWR) greater than 26,000 pounds to no more than 68 miles per hour (mph). Concurrently, the ATA petitioned the FMCSA to amend the Federal Motor Carrier Safety Regulations (FMCSR) to prohibit owners and operators from adjusting the speed limiting devices in affected vehicles above 68 mph. That same year, FMCSA received a petition from Road Safe America to initiate a rulemaking to amend the FMCSRs to require that all trucks manufactured after 1990 with a GVWR greater than 26,000 pounds be equipped with electronic speed limiting systems set at not more than 68 mph. NHTSA published a notice in 2011 granting the petitions.

After conducting an analysis of crash data and data on heavy vehicle travel speeds, the agencies have determined that reducing heavy vehicle travel speed would reduce the severity of crashes involving these vehicles and reduce the number of resulting fatalities. After analyzing several set speeds, including 60 mph, 65 mph, and 68 mph, NHTSA is proposing to heavy vehicles to be equipped with a speed limiting system. As manufactured and sold, each of these vehicles would be required by NHTSA to have a speed limiting device to set a particular speed.

FMCSA is proposing a complementary Federal motor carrier safety regulation (FMCSR) requiring multipurpose passenger vehicles, trucks, and buses and school buses with a GVWR of more than 11,793.4 kilograms (26,000 pounds) to be equipped with a speed limiting system meeting the requirements of the proposed FMVSS applicable to the vehicle at the time of manufacture. Motor carriers operating such vehicles in interstate commerce would be required to maintain the speed limiting systems for the service life of the vehicle.

Objectives of, and Legal Basis for, the Proposal or Final Rule

The objectives of the proposed rule are to reduce the severity of crashes involving heavy vehicles and reduce the number of fatalities. Since this NPRM would apply both to vehicle manufacturers and motor carriers that purchase and operate these vehicles, this joint rulemaking is based on the authority of both NHTSA and FMCSA. The legal authorities for NHTSA and FMCSA are described in Section II, above.

Description and Estimate of the Number of Small Entities to Which the Proposal or Final Rule Will Apply

The proposed FMVSS would apply to manufacturers of multipurpose passenger vehicles, trucks, and buses, with a GVWR of more than 11,793.4 kilograms (26,000 pounds). The proposed FMCSR would apply to motor carriers operating such vehicles in interstate commerce.

Vehicle Manufacturers

We believe there are very few manufacturers of heavy trucks in the United States which can be considered small businesses. The heavy truck industry is highly concentrated with large manufacturers, including Daimler Trucks North America (Freightliner, Western Star), Navistar International, Mack Trucks Inc., PACCAR (Peterbilt and Kenworth) and Volvo Trucks North America, accounting for more than 99% of the annual production. We believe that the remaining trucks (less than 1 percent) are finished by final stage manufacturers. With production volume of less than 1 percent annually, these remaining heavy truck manufacturers are most likely small businesses.

NHTSA believes there are approximately 37 bus manufacturers in the United States. Of these, 10 manufacturers are believed to be small businesses: Advanced Bus Industries, Ebus Inc., Enova Systems, Gillig Corporation, Krystal Koach Inc., Liberty Bus, Sunliner Coach Group LLC, TMC Group Inc., Transportation Collaborative, Inc., Van-Con, Inc.

Motor Carriers

The motor carriers regulated by FMCSA operate in many different industries. Most for-hire property carriers fall under North American Industrial Classification System (NAICS) subsector 484, Truck Transportation, and most for-hire passenger transportation carriers fall under NAICS subsector 485, Transit and Ground Passenger Transportation. The SBA size standard for NAICS subsector 484 is currently $25.5 million in revenue per year, and the SBA size standard for NAICS subsector 485 is currently $14 million in revenue per year.

Because the agencies do not have direct revenue figures for all carriers, power units (PUs) serve as a proxy to determine the carrier size that would qualify as a small business given the SBA's revenue threshold. In order to produce this estimate, it is necessary to determine the average revenue generated by a PU unit.

With regard to truck PUs, FMCSA determined in the Electronic On-Board Recorders and Hours-of-Service Supporting Documents Rulemaking RIA[71] that a PU produces about $172,000 in revenue annually. According to the SBA, motor carriers of property with annual revenue of $25.5 million are considered small businesses.[72] This equates to 148 power units (148.26 = 25,500,000/172,000). Thus, FMCSA considers motor carriers of property with 148 PUs or fewer to be small businesses for purposes of this analysis. FMCSA then looked at the number and percentage of property carriers with recent activity that would fall under that definition (of having 148 power units or fewer). The results show that over 99 percent of all interstate property carriers with recent activity have 148 PUs or fewer, which amounts to about 493,000 carriers.[73] Therefore, the overwhelming majority of interstate carriers of property would be considered small entities.

With regard to passenger-carrying vehicles, FMCSA conducted a preliminary analysis to estimate the average number of PUs for a small entity earning $14 million annually,[74] based on an assumption that passenger carriers generate annual revenues of $150,000 per PU. This estimate compares reasonably to the estimated average annual revenue per power unit for the trucking industry ($172,000). A lower estimate was used because passenger-carrying commercial motor vehicles (CMVs) generally do not accumulate as many vehicle miles traveled (VMT) per year as trucks, and it is therefore assumed that they would generate less revenue per PU on average. The analysis concluded that passenger carriers with 93 PUs or fewer ($14,000,000 divided by $150,000/PU = 93.3 PU) would be considered small entities. FMCSA then looked at the number and percentage of passenger carriers registered with FMCSA that have no more than 93 PUs. The results show that about 98% of active passenger carriers have 93 PUs or less, which is about 10,000 carriers. Therefore, the overwhelming majority of passenger carriers to which this NPRM would apply would be considered small entities.

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[70] Johnson, Steven L. & Pawar, Naveen, Mack-Blackwell Rural Transportation Center, College of Engineering, University of Arkansas, Cost-Benefit Evaluation of Large Truck-Automobile Speed Limits Differentials on Rural Interstate Highways, MBTC 2048 (Nov. 2005).

[71] FMCSA Regulatory Analysis, "Hours of Service of Drivers; Driver Rest and Sleep for Safe Operations," Final Rule (68 FR 22456, April 23, 2003).

[72] U.S. Small Business Administration Table of Small Business Size Standards matched to North American Industry Classification (NAIC) System codes, effective July 22, 2013. See NAIC subsector 484, Truck Transportation.

[73] FMCSA MCMIS Data, dated 2011.

Regarding bus companies, we believe that the companies most likely to be affected would be those that operate motorcoaches, which tend to be larger buses that are used for traveling longer distances. FMCSA data indicates that there are approximately 4,168 authorized motorcoach carriers, 813 of which own or lease only one motorcoach. The median number of motorcoaches owned or leased by these companies is 3. Accordingly, we estimate that most of the 4,168 motorcoach companies are small entities with annual revenues of less than $14 million per year.

The agencies request comments on the percentage of small carrier business that might be affected by the proposed speed limiting device requirements.

Description of the Projected Reporting, Record Keeping and Other Compliance Requirements for Small Entities

Vehicle Manufacturers

The impact on manufacturers of heavy vehicles, whether they are large or small businesses, would be minimal, because these vehicles are already equipped with electronic engine controls that include the capability to limit the speed of the vehicle.

Motor Carriers

FMCSA is proposing a complementary Federal motor carrier safety regulation (FMCSR) requiring multipurpose passenger vehicles, trucks, and buses with a GVWR of more than 11,793.4 kilograms (26,000 pounds) to be equipped with a speed limiting system meeting the requirements of the proposed FMVSS applicable to the vehicle at the time of manufacture. Motor carriers operating such vehicles in interstate commerce would be required to maintain the speed limiting systems for the service life of the vehicle.

The impact on small carriers could be significant from a competitive perspective. Regarding small trucking companies, the agencies predict that a speed limiting device might take away certain competitive advantages that small carriers might have over large trucking firms that already utilize speed limiting devices, but we have very limited knowledge of knowing whether that impact is 10 percent of their business, or more or less. We estimated that independent owner-operators of combination trucks and single unit trucks would drive 33,675 million miles annually out of 112,249 million miles traveled by these vehicles on rural and urban interstate highways. With the estimated average wage of $0.32/mile, the total annual revenue would be $10,776 million. As described in detail earlier in the PRIA, unlike large trucking companies, small carriers with limited resources may not be able to increase the number of drivers to overcome the delay in delivery time. However, the competitive impacts are difficult to estimate. For example, with 65 mph speed limiting devices, we estimated that owner-operators would lose $50 million annually. Accordingly, owner-operators would lose not more than 1% of their labor revenue. However, we note that the estimates were made based on very limited data. The agencies request comment on how large the economic impact might be on owner-operators.

Regarding small motorcoach companies, we have even more limited data to predict how affected small motorcoach companies would compensate for the delay in delivery time or to quantify the effect on those businesses. Like small trucking companies, small motorcoach companies might need additional drivers to cover the same routes with a speed limiting device if the speed limiting device reduces the distance they can travel within their maximum hours of service. If those companies were unable to hire additional drivers, they would likely lose market share to larger companies that could afford additional drivers.

The agencies believe that the proposed rule will affect small businesses, as discussed above; and may have a significant economic impact on a substantial number of small businesses. We request comment on the agencies' assumptions regarding how this rulemaking would affect small heavy vehicle operators, and we request comment on the type and magnitude of that effect.

Duplication With Other Federal Rules

Although the heavy vehicle fuel efficiency program allows speed limiting devices as a compliance option for vehicle manufacturers, it does not require the devices.[75] If a manufacturer chooses to use a speed limiting device for compliance with that program, the speed limiting device must meet certain requirements. These requirements are not identical to the proposed FMVSS requirements. Specifically, the fuel efficiency program requirements permit speed limiting devices to have a soft top (*i.e.,* a higher maximum speed than the set speed for a limited amount of time), which would not be permitted under the proposed FMVSS requirements. The fuel efficiency program also specifies certain tamper-proofing requirements that would not be required by the proposed FMVSS. Finally, the proposed FMVSS includes a requirement that there be a means of reading the last two speed setting modifications and the time and date of those modifications, which is not required for speed limiting devices under the fuel efficiency program.

Although the proposed speed limiting device requirements are different than those for speed limiting devices under the fuel efficiency program, the requirements are not incompatible, and manufacturers would be able to design speed limiting devices that satisfy the requirements of the proposed FMVSS and the requirements necessary for the devices to be used for compliance with the fuel efficiency program. Manufacturers that choose to use speed limiting systems as a means of compliance with the fuel efficiency program would need to design a system that meets the requirements of both the program and the proposed FMVSS, *i.e.,* a speed limiting system with an initial speed setting no greater than 65 mph that cannot be adjusted above the speed used for compliance under the fuel efficiency program. Although the proposed FMVSS would not prohibit a "soft top" feature, in order to meet the proposed requirements, the highest achievable speed using this feature would have to be initially set to a speed no greater than 65 mph.

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[74] Motor carriers of passengers with an annual revenue of $14 million are considered small businesses. *See id.,* subsector 485, Transit and Ground Passenger Transportation.

[75] *See* 40 CFR 1037.640.

Description of Any Significant Alternatives to the Rule Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

The agencies examined the expected benefits and costs of alternative speed limiting requirements, including different maximum speed settings, various tamper resistance requirements, and alternative compliance test procedures. The agencies are also requesting comment on the potential alternative of tying set speed to the speed limit of the road using GPS, vision, or vehicle-to-infrastructure based technologies.

When speed limiters are required to set speeds at a particular speed, the requirement potentially imposes costs on CMV operators, including the small operators. A higher proposed speed setting would reduce the costs resulting from additional travel time. As explained in detail in the Unfunded Mandates Reform Act analysis, NHTSA and FMCSA carefully explored the initial speed setting. The benefits estimate showed that limiting vehicles to a speed of 65 mph would save substantially more lives than the slightly higher speed setting of 68 mph. This speed setting would also harmonize U.S. requirements with those of Ontario and Quebec.

The agencies requests comment on how the rule will impact small businesses and alternatives that would accomplish the objectives of the rulemaking while minimizing the impacts to small businesses.

C. Executive Order 13132 (Federalism)

NHTSA and FMCSA have examined today's NPRM pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agencies have concluded that the rulemaking would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The proposed rule would not have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

NHTSA rules can have preemptive effect in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision:

> When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter.

49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law [76] addressing the same aspect of performance.

The proposed FMVSS would preempt State laws or regulations addressing heavy vehicle speed limiting devices. However, the proposed FMVSS would not affect the States' ability to set maximum speed limits for public roads and highways, even if the posted speed limits for heavy vehicles are different than the set speed mandated when the vehicles are manufactured and sold.

The express preemption provision described above is subject to a savings clause under which "[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law." 49 U.S.C. § 30103(e) Pursuant to this provision, State common law tort causes of action against motor vehicle manufacturers that might otherwise be preempted by the express preemption provision are generally preserved. However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of State common law tort causes of action by virtue of NHTSA's rules—even if not expressly preempted.

This second way that NHTSA rules can preempt is dependent upon the existence of an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer—notwithstanding the manufacturer's compliance with the NHTSA standard. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on motor vehicle manufacturers will generally not be preempted. However, if and when such a conflict does exist —for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted. See *Geier* v. *American Honda Motor Co.*, 529 U.S. 861 (2000).

Pursuant to Executive Order 13132, NHTSA has considered whether this rule could or should preempt State common law causes of action. The agency's ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation.

To this end, NHTSA has examined the nature (*e.g.*, the language and structure of the regulatory text) and objectives of today's proposal and finds that this proposal, like many NHTSA rules, prescribes only a minimum safety standard. Accordingly, NHTSA does not intend that this proposal preempt state tort law that would effectively impose a higher standard on motor vehicle manufacturers than that established by today's proposal. Establishment of a higher standard by means of State tort law would not conflict with the minimum standard established in this document. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

With a few exceptions not applicable here, FMCSA regulations do not have preemptive effect. However, States that accept MCSAP grant funds—currently all 50 States and the District of Columbia—must adopt regulations "compatible" with many provisions of the FMCSRs. Pursuant to MCSAP, participating States would be required to adopt and enforce, within 3 years of the effective date of a final rule, State laws or regulations applicable both to interstate and intrastate commerce that have the same effect as proposed 49 CFR 393.85. In other words, States would have to prohibit even motor carriers operating entirely in intrastate commerce from re-setting their speed limiting devices to speeds above the maximum specified set speed. Because State participation in MCSAP is voluntary, the program does not have federalism implications.

We solicit the comments of the States and other interested parties on this assessment of issues relevant to E.O. 13132.

D. Executive Order 12988 (Civil Justice Reform)

When promulgating a regulation, Executive Order 12988 specifically requires that the agency must make every reasonable effort to ensure that the regulation, as appropriate: (1) Specifies in clear language the preemptive effect; (2) specifies in clear language the effect on existing Federal law or regulation, including all provisions repealed, circumscribed, displaced, impaired, or modified; (3) provides a clear legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction; (4) specifies in clear language the retroactive effect; (5) specifies whether administrative proceedings are to be required before parties may file suit in court; (6) explicitly or implicitly defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship of regulations.

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[76] The issue of whether there is any potential for preemption of state tort law is addressed in the immediately following paragraph discussing the operation of implied preemption.

Pursuant to this Order, NHTSA and FMCSA note as follows. The preemptive effect of this proposal is discussed above in connection with Executive Order 13132. NHTSA and FMCSA note further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

E. Executive Order 13609 (Promoting International Regulatory Cooperation)

The policy statement in section 1 of Executive Order 13609 provides, in part:

> The regulatory approaches taken by foreign governments may differ from those taken by U.S. regulatory agencies to address similar issues. In some cases, the differences between the regulatory approaches of U.S. agencies and those of their foreign counterparts might not be necessary and might impair the ability of American businesses to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

The regulatory approaches to speed limiting devices taken by certain foreign governments are discussed in Section V above. The proposed FMVSS adopts an approach that is similar to the widely used UNECE regulation. Specifically, NHTSA is proposing a test procedure substantially patterned after UNECE R89, which is described above. NHTSA requests public comment on whether (a) the "regulatory approaches taken by foreign governments" concerning the subject matter of this rulemaking and (b) the above policy statement have any implications for this rulemaking.

F. Executive Order 12630 (Taking of Private Property)

This rulemaking would not effect a taking of private property or otherwise have takings implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

G. Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this action.

H. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

We analyzed this rulemaking under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and determined that it does not have a substantial effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

I. Executive Order 13045 (Protection of Children)

We analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. We determined that this NPRM would not pose an environmental risk to health or safety that might affect children disproportionately.

J. Executive Order 13211 (Energy Effects)

FMCSA analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Executive Order because while this is an economically significant rulemaking it is not likely to have an adverse effect on the supply, distribution, or use of energy. In fact, this rulemaking would have a positive impact on the energy supply.

K. National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113) (15 U.S.C. 3701 note), "all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments." Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as SAE International (SAE). The NTTAA directs agencies to provide Congress, through OMB, explanations when they decide not to use available and applicable voluntary consensus standards.

NHTSA and FMCSA are not aware of any voluntary consensus standards related to the proposed speed limiting device requirements that are available at this time. However, we will consider any such standards as they become available and seek comment on whether any such standards exist.

L. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). In 2013 dollars, this threshold is $141 million. This joint rulemaking is not expected to result in the expenditure by State, local, or tribal governments, in the aggregate, of more than $141 million annually, but the proposed rules could result in the expenditure of that magnitude by the private sector.

As noted previously, the agencies have prepared a detailed economic assessment in the PRIA. That assessment analyzes the benefits and costs of the proposed speed limiting device requirements for multipurpose passenger vehicles, trucks, buses, and school buses with a gross vehicle weight rating of more than 11,793.4 kilograms (26,000 pounds). The agencies' preliminary analysis indicates that although the proposed rule would result in minimal costs to vehicle manufacturers, it could result in expenditures by CMV operators of $1,534 million annually for 60 mph speed limiters, $514 million annually for 65 mph speed limiters, and $206 million annually for 68 mph speed limiters assuming a 7 percent discount rate. This is because limiting vehicles to speeds will increased travel time.

The PRIA also analyzes the expected benefits and costs of alternative speed limiting requirements, including different speed settings, various tamper resistance requirements, and alternative compliance test procedures. The proposed speed setting is the requirement that potentially imposes costs on CMV operators. As explained in detail in the PRIA and Section VIII of the preamble for this proposal, NHTSA and FMCSA carefully explored alternative requirements for the initial speed setting. The benefits estimate showed that limiting vehicles to a speed of 65 mph would save substantially more lives than the higher petitioned speed setting of 68 mph. Some additional safety benefits may be realized with a lower speed setting of 60 mph. A 65 mph set speed requirement would harmonize U.S. requirements with those of Ontario and Quebec.

Additionally, as described in Section X.A.2, above, the agencies estimate that the proposal would result in substantial fuel savings. The fuel savings would offset the costs to CMV operators resulting from increased travel time. Assuming that vehicle manufacturers design their speed limiting devices so that the devices also meet the necessary requirements to be used for compliance with the medium- and heavy-duty vehicle fuel efficiency program (which the agencies expect they will),[77] the fuel savings resulting from this rulemaking would be maximized with a set speed of 65 mph because the additional fuel savings for set speeds below 65 mph were accounted for in the heavy vehicle fuel efficiency program final rule.[78]

Specifically, under the medium- and heavy-duty vehicle fuel efficiency program, heavy vehicle drive cycles are evaluated at a maximum speed of 65 mph,[79] and a speed limiting device with a setting at or above 65 mph will show no fuel savings.[80] Thus, any fuel savings associated with speed settings of 65 mph and above were not estimated in the fuel efficiency program rulemaking. However, fuel efficiency evaluation under the program would reflect the difference in fuel consumption between the 65 mph baseline and a speed limiting device with a set speed below 65 mph,[81] and the heavy-duty vehicle fuel efficiency final rule has already accounted for the fuel savings resulting from this difference. Accordingly, no additional fuel savings from a set speed below 65 mph could be attributed to this rulemaking without double counting the benefits of the heavy-duty vehicle fuel efficiency program.

Comparing the costs and fuel savings of the various speed setting alternatives, which are discussed in detail in the PRIA, the agencies estimate that limiting heavy vehicles to 68 mph would result in $209 million in costs (assuming a 7 percent discount rate) from increased travel times, as compared to $523 million in costs associated with limiting vehicles to 65 mph. However, the cost difference would be offset by additional fuel savings that would be realized with a 65 mph speed setting versus a 68 mph speed.

The agencies estimate that limiting heavy vehicles to 60 mph would result in $1,561 million in costs (assuming a 7 percent discount rate) from increased travel times, *i.e.*, an increase in costs of $1,038 million compared to the costs of a 65 mph speed setting. However, as explained above, assuming that vehicle manufacturers design their speed limiting devices so that the devices also meet the necessary requirements to be used for compliance with the heavy-duty vehicle fuel efficiency program, no additional fuel savings from limiting vehicles to 60 mph versus 65 mph could be attributed to this rulemaking without double counting the benefits already accounted for in the medium- and heavy-duty vehicle fuel efficiency program rulemaking.

M. National Environmental Policy Act

NHTSA and FMCSA have analyzed this NPRM for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined that this action may have an impact on the quality of the human environment. Concurrently with this NPRM, the agencies are releasing a Draft Environmental Assessment (Draft EA), pursuant to NEPA and implementing regulations and procedures issued by the Council on Environmental Quality (CEQ) (40 CFR parts 1500–1508), NHTSA (49 CFR part 520), and FMCSA (Order 5610.1, issued March 1, 2004 [69 FR 9680]). The agencies prepared the Draft EA to analyze the potential environmental impacts of the proposal to require installation of speed limiters in new heavy vehicles and maintenance of a maximum speed setting by motor carriers operating affected vehicles. The Draft Environmental Assessment, which informs this NPRM, is available for inspection or copying in the *Regulations.gov* Web site listed under **ADDRESSES**. The Draft EA analyzes the possible environmental impacts of heavy vehicles driving at slower speeds due to the use of vehicle speed limiters set at three alternative maximum speeds: 60 mph, 65 mph, and 68 mph. The Draft EA also analyzes and compares these action alternatives to a "No Action Alternative" based on current driving behavior. The resource areas that may be affected by the proposed action include air quality, public health and safety, and solid waste and hazardous materials. In addition, the Draft EA addresses the agencies' analysis required by Section 176(c) of the Clean Air Act.

NHTSA and FMCSA have reviewed the information presented in the Draft EA and conclude that the proposed action would have an overall positive impact on the quality of the human environment. In particular, the agencies anticipate reductions in most harmful air pollutant emissions, benefits from reduced fuel use (including reductions in carbon dioxide emissions), and reductions in releases of solid waste and hazardous materials corresponding to reductions in crash severity. The Draft EA shows anticipated increases in some harmful air pollutant emissions. The degree of impacts for each alternative correlate with the degree of speed reduction anticipated under that alternative. Overall, these impacts are not anticipated to be great in intensity, and they will occur so far into the future (as a result of slow fleet turnover where new vehicles subject to the requirements make up only a small percentage of on-road vehicles in the short term) that they are subject to considerable uncertainty. Still, for each action alternative, the environmental impacts of the proposed action are expected to be beneficial when taken together and are not expected to rise to a level of significance that necessitates the preparation of an Environmental Impact Statement.

The Draft EA is open for public comment. The agencies will consider all comments received in preparing and reviewing the Final EA. At this time, based on the information in the Draft EA and assuming no additional information or changed circumstances, the agencies expect to issue a Finding of No Significant Impact. A FONSI, if appropriate, would be issued concurrent with the Final EA. However, any such finding will not be made before careful review of all comments.

N. Environmental Justice

We evaluated the environmental effects of this NPRM in accordance with E.O. 12898 and determined that there are neither environmental justice issues associated with its provisions nor any collective environmental impact resulting from its promulgation. Environmental justice issues would be raised if there were a "disproportionate"' and "high and adverse impact" on minority or low-income populations. None of the alternatives analyzed in FMCSA or NHTSA's deliberations would result in high and adverse environmental justice impacts.

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[77] 40 CFR 1037.640.

[78] 76 FR 57106 (Sep. 15, 2011).

[79] 76 FR 57182; Final Rulemaking to Establish Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles, Regulatory Impact Analysis, Section 4.2.4, EPA–420–R–11–901 (August 2011), available at *http://www.nhtsa.gov/fuel-economy*.

[80] 75 FR at 57155.

[81] *Id.*

O. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. This rulemaking would not establish any new information collection requirements.

P. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

Q. Privacy Impact Assessment

Section 522 of Title I of Division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108–447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the agencies to conduct a privacy impact assessment (PIA) of a proposed regulation that will affect the privacy of individuals. This joint rulemaking would not require the collection of any personally identifiable information or otherwise affect the privacy of individuals, and thus no PIA is required.

R. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the NHTSA and FMCSA RINs contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Proposed Regulatory Text

List of Subjects

49 CFR Part 393

Highways and roads, Incorporation by reference, Motor carriers, Motor vehicle equipment, Motor vehicle safety.

49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, FMCSA and NHTSA propose to amend 49 CFR parts 393 and 571, respectively, as follows:

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

■ 1. The authority citation for part 393 of title 49 continues to read as follows:

Authority: 49 U.S.C. 31136, 31151, and 31502; sec. 1041(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991); sec. 5524 of Pub. L. 114–94, 129 Stat. 1312, 1560; and 49 CFR 1.87.

■ 2. Amend § 393.5 to include, in alphabetical order, a definition of "speed limiting device."

§ 393.5 Definitions.

Speed limiting device means a device or function in a vehicle capable of limiting the maximum motive power-controlled speed at which the vehicle may operate.

■ 3 Add § 393.85 to read as follows:

§ 393.85 Speed Limiting Devices.

Each multipurpose passenger vehicle, truck, bus and school bus with a gross vehicle weight rating of more than 11,793.4 kilograms (26,000 pounds) manufactured on or after September 1, 2020, shall be equipped with a device that limits its speed to [a speed to be specified in a final rule] as required by Federal Motor Vehicle Safety Standard No. 140 (49 CFR 571.140).

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 4. The authority citation for Part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.95.

■ 5. Add § 571.140 to subpart B to read as follows:

§ 571.140 Standard No. 140; Speed limiting devices.

S1. *Scope.* This standard specifies performance requirements for vehicle speed limiting functionality used to limit the road speed of motor vehicles.

S2. *Purpose.* The purpose of this standard is to reduce the number of deaths and injuries that occur in crashes when heavy vehicles are traveling at high speeds.

S3. *Application.* This standard applies to multipurpose passenger vehicles, trucks, buses, and school buses with a gross vehicle weight rating of more than 11,793.4 kilograms (26,000 pounds).

S4. *Definitions.*

Maximum Speed (V_{max}) means the maximum speed reached by the vehicle.

Set speed (V_{set}) means the intended mean vehicle speed when operating in a stabilized condition.

Speed determination parameters are the vehicle parameters used by the speed limiting device to calculate the vehicle's speed including tire size and gear ratios.

Speed limiting device means a device or function in a vehicle capable of limiting the maximum motive power-controlled speed at which the vehicle may operate.

Stabilized speed (V_{stab}) means the average vehicle speed as limited by the vehicle speed limiting device calculated according to S7.4.

S5. *Requirements.* Each vehicle manufactured on or after September 1, 2020, shall be equipped with a speed limiting device and meet the requirements specified in this section.

S5.1 *Equipment Requirements.* The speed limiting device shall meet the requirements in paragraphs S5.1.1 through S5.1.2.

S5.1.1 *Readable Information.* The information specified in paragraphs S5.1.1.1 through S5.1.1.3 shall be readable by means of a connector meeting the requirements of 40 CFR 86.010–18.

S5.1.1.1 *Current Settings.* The current set speed (V_{set}) and current speed determination parameters.

S5.1.1.2 *Previous* V_{set}.

(a) If the V_{set} has changed once, the previous V_{set} value and the time and date of the V_{set} change.

(b) If the V_{set} has changed two or more times, the two most recent V_{set} values set prior to the current V_{set} value and the time and date of the two most recent V_{set} changes.

S5.1.1.3 *Previous Speed Determination Parameter Values. For* *each speed determination parameter that has changed, the following information:*

(a) If the speed determination parameter has changed once, the previous value for each changed parameter and the time and date of the parameter change.

(b) If the speed determination parameter has changed two or more times, the two most recent values for the parameter set prior to the current parameter value and the time and date of the two most recent changes to the parameter.

S5.1.2 *Modification.* A means shall be provided to modify the speed determination parameters.

S5.2 *Performance Requirements.* When tested according to S6 and S7, the vehicle shall perform as follows:

S5.2.1 The set speed (V_{set}) shall be no greater than [a speed to be specified in a final rule].

S5.2.2 After the vehicle speed has reached 95% of V_{set} for the first time, V_{max} shall not exceed V_{stab} by more than 5%.

S5.2.3 Ten seconds after the vehicle first reaches 95% of V_{set} and beyond:

S5.2.3.1 The vehicle speed shall not vary by more than ±2% of V_{stab}, and

S5.2.3.2 V_{stab} as calculated according to S7.4 shall be no greater than V_{set}.

S5.3 The speed limiting device may allow normal acceleration control for the purpose of gear changing.

S6. *Test Conditions.*

S6.1 *Ambient conditions.*

S6.1.1 The ambient temperature is between 7° C (45 °F) and 40° C (105 °F).

S6.1.2 The wind speed is less than 5m/s (11 mph).

S6.2 *Road test surface.*

S6.2.1 The test track is suitable to enable a stabilization speed to be maintained and the test surface is solid-paved, uniform, without irregularities, undulations, dips or large cracks. Gradients do not exceed 2% and do not vary by more than 1% excluding camber effects.

S6.2.2 The test surface is free from standing water, snow, or ice.

S6.3 *Vehicle conditions*

S6.3.1 Tires. The vehicle is tested with the tires installed on the vehicle at the time of initial vehicle sale. The tires are inflated to the vehicle manufacturer's recommended cold tire inflation pressure(s).

S6.3.2 The vehicle is tested in an unloaded condition with a single operator and necessary test equipment.

S6.3.3 A truck tractor is tested without a trailer.

S6.4 *Test equipment*

S6.4.1 The speed measurement is independent of the vehicle speedometer and is accurate within plus or minus 1%.

S7. *Running the test*

S7.1 The vehicle, running at a speed which is 10 km/h below the set speed, is accelerated at a smooth and progressive rate using a full positive action on the accelerator control.

S7.2 This action is maintained at least 30 seconds after the vehicle speed has reached 95% of V_{set}.

S7.3 The instantaneous vehicle speed is recorded at a frequency of at least 100 Hz during the testing in order to establish the speed versus time plot as shown in Figure 1.

S7.4 V_{stab} is the average vehicle speed starting ten seconds after the vehicle first reaches a speed equal to 95% of V_{set} measured over a duration of at least 20 seconds.

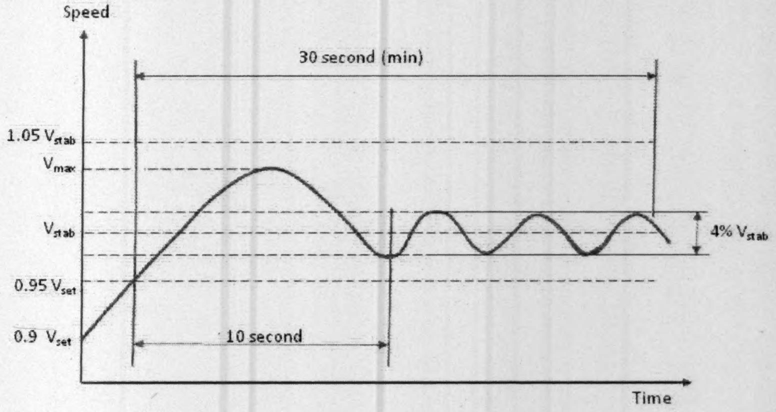

FIGURE 1

Issued under the authority delegated in 49 CFR 1.87 on: Dated: August 25, 2016.

T. F. Scott Darling, III,

Administrator,

Issued under the authority delegated in 49 CFR 1.95 on: Dated: August 25, 2016.

Mark R. Rosekind,

Administrator.

[FR Doc. 2016–20934 Filed 9–6–16; 8:45 am]

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